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Supreme Court of the United States

OCTOBER TERM, 1962

No. 104

NEW JERSEY, ET AL., APPELLANTS,

vs.

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY.**

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FILED MAY 4, 1963

PROBABLE JURISDICTION NOTED JUNE 25, 1963

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[fol. 1]

[File endorsement omitted]

**IN UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action No. 401-61

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION,
STATE OF NEW JERSEY, and BOARD OF PUBLIC UTILITY
COMMISSIONERS OF THE STATE OF NEW JERSEY, Defendants.

COMPLAINT—Filed May 18, 1961

Plaintiff, New York, Susquehanna and Western Railroad Company, alleges and says as follows:

1. Plaintiff is a corporation of the State of New Jersey, having its principal office at 160 Market Street, Paterson 1, New Jersey, and is within the jurisdiction of this Court.

2. This Court has jurisdiction of this action by virtue of the provisions of Title 28, United States Code, Section 1336, and under the procedure established by Chapter 157 of Title 28, United States Code, Sections 2321 to 2325, inclusive, and Section 2284; and the conditions set out by Title 49, Section 17(9), United States Code, have been complied with. To the extent the matter may not be embraced by one or more of the foregoing statutes, this Court has jurisdiction by virtue of Title 5, Section 1009, United States Code (Section 10, Administrative Procedure Act).

3. The venue of this action is in the District of New Jersey by virtue of the provisions of Title 28, United States Code, Section 1398.

4. Plaintiff is a Common Carrier by Railroad subject to the provisions of Part I of the Interstate Commerce Act, Title 49, United States Code, Section 1, et seq.

[fol. 2] 5. This action is brought to review, suspend, enjoin, annul and set aside certain orders of the Interstate Commerce Commission entered by the said Commission in a matter entitled "New York, Susquehanna and Western Railroad Company Discontinuance of Passenger Service Between New York, N.Y. and Butler, N.J.", Finance Docket No. 21417, which said orders are dated January 18, 1961 and May 10, 1961.

6. The order of January 18, 1961 dismissed a notice filed by plaintiff for discontinuance of passenger service between New York, N.Y. and Butler, N.J. pursuant to Section 13a(1) of the Interstate Commerce Act, Title 49, United States Code, Section 13a(1) for lack of jurisdiction. A copy of said order is attached hereto and made a part hereof as Exhibit A.

7. The order of May 10, 1961 denied a Petition filed by plaintiff for reconsideration of the order of January 18, 1961 entered by the Commission by Division 4. A copy of said order is attached hereto and made a part hereof as Exhibit B.

8. On December 30, 1960, plaintiff filed notices of proposed discontinuance of service with the Interstate Commerce Commission pursuant to Section 13a(1) of the Interstate Commerce Act, Title 49 U.S.C. Sec. 13a(1) and Title 49, Code of Federal Regulations Sec. 43.1, et seq. The said notices proposed that plaintiff would discontinue service on its eastbound passenger trains 908, 910 and 916 and on its westbound passenger trains 919, 923 and 929 operating daily except Saturdays, Sundays and Holidays, and on its westbound passenger train 915 operating Good Friday, Election Day, December 23rd and December 30th, effective 12:01 A.M. January 30, 1961. The said notices were mailed to the Governors of New York and New Jersey and were posted in every station, depot or other facility served by the said trains. In conjunction with the filing of the said notices, plaintiff filed a "Statement in Relation

to Proposed Discontinuance of Train Service" with the Commission, required by Title 49, Code of Federal Regulations, Sec. 43.5.

[fol. 3] 9. On January 9, 1961, the State of New Jersey and its Board of Public Utility Commissioners filed a petition with the Commission praying that the Commission enter upon an investigation and moving to dismiss the proceedings without prejudice as improperly brought under Section 13a(1) of the Act. In support of its position that the proceedings should be dismissed as improperly brought under Section 13a(1) of the Act, the State alleged that the trains operated by plaintiff ran on tracks located wholly within the State of New Jersey and that the passengers traveled to New York City by a contract bus. It was further alleged by the State that Commission and Court decisions had held that the use of a bus operation did not make this operation part of a "line of railroad" or an "extension of a line of railroad" as those terms are used in Section 1(18) of the Act. It was then contended that the train operation was wholly intrastate and not within the jurisdiction of the Commission.

10. On January 18, 1961, prior to the time fixed by Rule 23 for plaintiff to file a reply to the petition of the State, the Commission, by Division 4, entered an order (Exhibit A) dismissing the notice filed by plaintiff on December 30, 1960 for lack of jurisdiction. The Commission in its order of January 18, 1961 made a finding that "the trains proposed to be discontinued operate solely within the State of New Jersey" and therefore concluded "the said notice filed December 30, 1960, by the New York, Susquehanna and Western Railroad does not constitute a notice properly filed under the provisions of Section 13a(1) of the Interstate Commerce Act",

11. The said order of the Commission, by Division 4, dated January 18, 1961 (Exhibit A) dismissing the notice of proposed discontinuance of service filed by plaintiff on December 30, 1960 for lack of jurisdiction, and the order of the Commission dated May 10, 1961 (Exhibit B) denying the Petition for reconsideration filed by plaintiff, are improper, erroneous and illegal and should be suspended,

enjoined, and set aside or reversed for the following reasons:

[fol. 4] (a) Plaintiff is a common carrier by railroad with authority, among others, to transport passengers by rail from points in New Jersey to New York City, New York.

(b) It is established as a matter of law that "motor vehicle transportation" of an intraterminal nature is required by Section 202(c) of the Interstate Commerce Act to be regarded as railroad transportation, whether performed by the railroad or, as in the present case, by an agent or contractor of its choosing; Congress is deemed to have been familiar with this requirement when it enacted Section 13a(1) in 1958; wherefore it was error to conclude that plaintiff's train service is only between two points in the same State.

(c) Section 13a(1) of the Act is within Part I and is applicable solely to railroads. The said section provides a method for discontinuing "the operation or service of any train or ferry operating from a point in one State to a point in any other State". The operation and service performed by plaintiff, subject to Part I of the Act, is to transport passengers between points in New Jersey and New York City, in New York.

(d) The argument advanced by the State in its petition for an investigation and motion to dismiss (now denominated by the said Commission to be a "protest") concerning the "line of railroad" operated by plaintiff as defined in Section 1(18) of the Interstate Commerce Act is inapplicable to a proceeding brought under Section 13a(1) for the reason that the phrase "line of railroad" is not found in Section 13a(1); to the extent that these provisions may conflict, the later enactment, Section 13a(1), must prevail.

(e) The legislative history of Section 13a(1), which was Section 5 of the Transportation Act of 1958, 72 Stat. 570, shows that the House Bill, HR. 12832, did contain the phrase "line of railroad" but that this phrase was eliminated by the Conference Committee in the final draft which was enacted into law. 1958 U.S. Code Congressional and Administrative News pp. 3456, 3457, 3487.

[fol. 5] (f) All of the recitals of material and relevant facts set forth in plaintiff's "Statement" filed December 30, 1960 with the Commission constitute evidence and are part of the record herein pursuant to Commission Rule 19; there was no counterpleading thereto filed under the Rules of the Commission, and none of said recitals of facts were specifically denied in any such counterpleading.

(g) Plaintiff was deprived of due process of law in that the Commission entered the said Order of January 18, 1961 without awaiting plaintiff's Reply to the said petition (or protest) on which said order was based, the time for filing such Reply not having expired until January 30, 1961, without hearing or argument, and without affording plaintiff a reasonable time or opportunity to be heard or to present argument on the said petition (or protest) upon which said order was based.

(h) There is nothing contained in Section 13a(1) of the Interstate Commerce Act which imperatively requires that the Commission decide, prior to the effective date set out in the said notice, that a notice filed pursuant to the said section is not within the jurisdiction of the Commission.

(i) Plaintiff was deprived of due process of law in that the Commission failed to comply with its own rules and regulations.

(j) The Commission has issued no special regulations for notices filed under Section 13a(1) of the Interstate Commerce Act, except those found in Title 49, Code of Federal Regulations, Section 43.1 et seq. None of said regulations permit the Commission to render a decision without awaiting the filing of replies to protests or other pleadings.

(k) The Commission did have jurisdiction to conduct a hearing and receive argument on the question of jurisdiction advanced by the State, and it was prejudicial error to have entered the subject Order before plaintiff's time to [fol. 6] reply had expired, without hearing or argument, and without affording plaintiff a reasonable time or opportunity to be heard or to present argument thereon.

(l) Any construction of Section 13a(1) of the Act which would limit its application in the case of carriers by rail-

road whose tracks and trains terminate their run (in a physical sense) at a river barrier forming the boundary between two States across such river and across the State boundary by ferry, and which would exclude such carriers when they so continue the carriage of their passengers by motor coach via river tunnel or bridge, would be in contravention of the Constitution of the United States, in that the same would constitute the giving of a preference to the ports of one State over those of another by a regulation of commerce, and would constitute a deprivation of property without due process of law: wherefore said section 13a(1) must be construed in a fashion as to include both the classes above identified so that it would not be in contravention of said Constitution.

12. The State of New Jersey and its Board of Public Utility Commissioners, who appeared in the proceedings before the Commission by filing the said petition or protest, are named as defendants herein, in lieu of intervention (to which plaintiff would consent), in order that they may be heard and be bound by the judgment herein as to said orders, although no judgment or affirmative relief is sought against said defendants.

Wherefore, plaintiff, New York, Susquehanna and Western Railroad Company demands:

1. That process issue out of this Court against United States of America, Interstate Commerce Commission, State of New Jersey and Board of Public Utility Commissioners of New Jersey as provided by law.

[fol. 7]

2. That a court constituted as required by Title 28 U.S.C. Sections 2284 and 2325 consisting of three Judges, at least one of whom is a Circuit Judge, be convened and that said court so constituted and convened shall hear and determine this cause.
3. That the court of three Judges upon final hearing enter a judgment permanently suspending, enjoining, annulling and setting aside the orders of January 18, 1961 and May 10, 1961 entered by the Interstate Com-

merce Commission in dismissing the notice filed by the plaintiff.

4. That plaintiff have such other and further relief in the premises as to the Court may seem proper and just.

Lum, Biunno & Tompkins, Attorneys for Plaintiff,
605 Broad Street, Newark 2, N.J., By V. P. Biunno.

[fol. 8]

EXHIBIT "A" TO COMPLAINT

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 18th day of January, A. D. 1961.

Finance Docket No. 21417

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY DISCONTINUANCE OF PASSENGER SERVICE BETWEEN NEW YORK, N.Y., AND BUTLER, N.J.

It appearing, That on December 30, 1960, the New York, Susquehanna and Western Railroad Company filed with this Commission notices purportedly under section 13a(1) of the Interstate Commerce Act, as amended, that effective January 30, 1961, said carrier will discontinue service of its passenger trains Nos. 908, 910, 916, 919, 923, 929 and 915 allegedly operating between Butler, N.J., and New York, N.Y., serving numerous intermediate stations;

It further appearing, That by petition filed January 9, 1961, the State of New Jersey and its Board of Public Utilities Commissioners request this Commission to enter upon an investigation of the proposed discontinuance and petitioners move that the instant proceeding be dismissed without prejudice since the trains actually operate between Butler, N.J., and the Susquehanna Transfer, a point also

situated within the State of New Jersey, and in view thereof the proposal does not fall within the purview of section 13a(1) of the Interstate Commerce Act since the trains actually operate solely within the State of New Jersey and not "from a point in one State to a point in any other State" as provided by said section 13a(1);

It further appearing. That each of the trains proposed to be discontinued operate solely within the State of New Jersey and that therefore the said notice filed December 30, 1960, by the New York, Susquehanna and Western Railroad does not constitute a notice properly filed under the provisions of section 13a(1) of the Interstate Commerce Act;

It is ordered. That the notice filed December 30, 1960, by the New York, Susquehanna and Western Railroad in the instant proceeding be, and it is hereby, dismissed for lack of jurisdiction.

By the Commission, Division 4.

HAROLD D. McCoy
Secretary

(SEAL)

[fol:9]

EXHIBIT "B" TO COMPLAINT

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 10th day of May, A. D. 1961.

Finance Docket No. 21417

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY DISCONTINUANCE OF
PASSENGER SERVICE BETWEEN NEW YORK,
N.Y., and BUTLER, N.J.**

Upon consideration of (1) the notice and supporting data filed December 30, 1960, by the New York, Susquehanna and Western Railroad Company under section 13a(1) of

the Interstate Commerce Act proposing discontinuance of certain passenger trains allegedly operating between Butler, N.J., and New York, N.Y., (2) the order of the Commission, Division 4, dated January 18, 1961, dismissing said notice for lack of jurisdiction, (3) documents dated January 27 and February 17, 1961, by said railroad, titled Reply to Petition of State of New Jersey and its Board of Public Utility Commissioners and Request for Extension of Time and Amended Reply, and (4) a petition, filed February 20, 1961, by said railroad requesting reconsideration of the Commission's order dated January 18, 1961; and

It appearing, That a so-called Petition of the State of New Jersey and its Board of Public Utility Commissioners constituted one of approximately 100 protests to the discontinuance proposal of the railroad and was received and treated as such; that the documents filed by New York, Susquehanna and Western Railroad Company titled Reply and Amended Reply to Petition of the State of New Jersey, etc., constitute a reply to said protest;

It further appearing, That due and timely execution of the Commission's functions under the provisions of section 13a(1) imperatively require that a decision be reached in respect to a notice filed thereunder prior to the proposed effective date of said notice, and, thus, preclude deferment of a decision awaiting the filing of replies to protests or other pleadings;

It further appearing, That the material matters set forth in said reply and amended reply have been incorporated in said petition for reconsideration filed February 20, 1961, that said petition has been considered and that no showing has been made warranting reconsideration of the said order of January 18, 1961, dismissing said notice for want of jurisdiction;

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

HAROLD D. MCCOY,
Secretary

(SEAL)

[fol. 16]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Title omitted]

ANSWER—Filed June 5, 1961

Defendants, State of New Jersey and Board of Public Utility Commissioners of the State of New Jersey in answer to the Complaint state as follows:

1. The allegations of paragraph 1 of the Complaint are admitted.

2. The allegations of paragraph 2 of the Complaint are admitted, except insofar as they may state or imply that jurisdiction in this Court is based upon jurisdiction of the Interstate Commerce Commission to have entertained discontinuance of the trains in question, which part is denied.

3. The allegations of paragraph 3 of the Complaint are admitted.

4. The allegations of paragraph 4 of the Complaint are admitted except that any portion thereof alleging or implying that the Interstate Commerce Commission had jurisdiction over Plaintiff's application to discontinue the service in question is denied.

[fol. 17] 5. The allegations of paragraph 5 of the Complaint are admitted.

6. The allegations of paragraph 6 of the Complaint are admitted, except that portion thereof alleging that the notice filed by the Plaintiff was properly filed pursuant to Section 13(a)1 of the Interstate Commerce Act, Title 49 U.S. Code, is denied.

7. The allegations of paragraph 7 of the Complaint are admitted.

8. The allegations of paragraph 8 of the Complaint are admitted except that portion thereof alleging that the notices were mailed to the Governor of the State of New York and were posted in the Plaintiff's facilities, as to which

the defendants state that they are without knowledge or information sufficient to form a belief.

9. The allegations of paragraph 9 of the Complaint are admitted.

10. The allegations of paragraph 10 of the Complaint are admitted except that portion thereof alleging that the Plaintiff has a right under Rule 23 to file a reply to the protest to the proposed discontinuance, which allegation is denied.

11. The allegations of paragraph 11 of the Complaint are denied.

12. The defendants are without sufficient knowledge or information to form a belief as to the allegations of paragraph 12 of the Complaint.

Dated: June 2, 1961.

David D. Furman, Attorney General of New Jersey,
Attorney for Defendants, State of New Jersey and
Board of Public Utility Commissioners, By:
Anthony D. Andora, Deputy Attorney General.

[fol. 21]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

JOINT ANSWER OF THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION—Filed July 12, 1961

Defendants, United States of America and the Interstate
Commerce Commission, in answer to the complaint state
as follows:

I.

Admit the allegations of paragraphs 1 and 3 through 9
of the complaint.

II.

The allegations of paragraph 2 of the complaint are admitted except the last sentence thereof alleging jurisdiction in this Court under the Administrative Procedure Act, which is denied.

III.

The allegations of paragraph 10 of the complaint are admitted except that portion thereof alleging that plaintiff had a right under Rule 23 to file a reply to the protest to the proposed discontinuance, which is denied.

IV.

Deny the allegations contained in paragraph 11 of the complaint.

[fol. 22] Except as expressly admitted herein, defendants deny each and all of the allegations contained in the complaint to the extent that they are inconsistent with the averments of this answer or inconsistent with the orders of the Commission challenged by the complaint.

Wherefore, the United States of America and the Interstate Commerce Commission pray that the relief requested in the complaint be denied; that the complaint be dismissed, and that costs be assessed against the plaintiff.

John H. D. Wigger, Attorney, Department of Justice,
Washington 25, D. C.;

Lee Loevinger, Assistant Attorney General;

Chester A. Weidenburner, United States Attorney,
District of New Jersey, Newark, New Jersey;

Attorneys for the United States of America.

C. H. Johns, H. Neil Garson, Associates General
Counsel, Interstate Commerce Commission, Wash-
ington 25, D. C.;

Robert W. Ginnane, General Counsel;

Attorneys for the Interstate Commerce Commission.

[fol. 23] Certificate of Service (omitted in printing).

[fol. 72]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action No. 401-61

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION,
STATE OF NEW JERSEY, and BOARD OF PUBLIC UTILITY
COMMISSIONERS OF THE STATE OF NEW JERSEY, Defendants.

Appearances:

Luni, Biunno & Tompkins, Esqs., By Vincent P. Biunno,
Esq., Attorneys for plaintiff.

David M. Satz, Jr., Esq., United States Attorney,
By Raymond A. Young, Esq., Assistant United States
Attorney, and H. Neil Garsen, Esq. (D. C. Bar),
For the United States of America and Interstate
Commerce Commission, with John H. D. Wigger,
Esq., Lee Loevinger, Esq., C. H. Johns, Esq., Robert
W. Ginnane, Esq. (D. C. Bar), Of Counsel for the
Federal Government.

David D. Furman, Esq., Attorney General of the State
of New Jersey, By Richard Green, Esq., Deputy
Attorney General, For the State of New Jersey and
Board of Public Utility Commissioners.

OPINION—December 7, 1961

Before: Honorable Gerald McLaughlin, C.J., Honorable
Phillip Forman, C.J., Honorable Reynier J. Wortendyke,
Jr., D.J.

WORTENDYKE, D.J.

In this action the plaintiff, Susquehanna, seeks a judgment setting aside two certain "orders" of the Interstate Commerce Commission made on January 18, 1961 and May 10, 1961, respectively.

[fol. 73] This Court has jurisdiction by virtue of the provisions of 28 U.S.C. § 1336, which is being exercised appropriately as a three-judge court in accordance with the procedure prescribed by §§ 2321 to 2325 inclusive, and § 2284 of the same Title.

The Commission's order of May 10, 1961 was a denial of a petition for reconsideration of its order of January 18, 1961. Thus plaintiff exhausted its administrative remedy before the Commission before coming here. 49 U.S.C. § 17(9); *United States v. Abilene & Southern Railway Co.*, 1924, 265 U.S. 274.

Susquehanna operates a line of railroad as a common carrier for the transportation of passengers from Butler, New Jersey, to New York City. For its corporate history, see *In re New York, S. & W. R. Co.*, 3 Cir. 1940, 109 F. 2d 988. The railroad runs three passenger trains in each direction daily, except Saturdays, Sundays and holidays, during commuters' hours only, and no mail, baggage or express is handled thereon. If the operation of these trains is discontinued, no passenger service will be furnished by the carrier. Each train consists of a single-unit diesel locomotive and a single trailing passenger car, and has a crew consisting of an engineer, a fireman, a conductor and a brakeman. Although its trains do not travel eastwardly of a transfer point in North Bergen, New Jersey, its passengers for and from New York City are transported by bus, via the Lincoln Tunnel beneath the Hudson River, between that transfer point and the bus terminal of the Port of New York Authority at 41st Street and Eighth Avenue, in Manhattan. The buses so employed are owned and operated by Public Service Coordinated Transport, a New Jersey corporation, unaffiliated but under contract with the plaintiff.

Susquehanna emerged from reorganization proceedings under § 77 of the Bankruptcy Act, in 1953. For the year

[fol. 74] 1960, the cost of operating the trains which Susquehanna seeks to discontinue, including depreciation of locomotives and cars, is alleged to exceed the revenues therefrom by \$117,214.

The provisions of Part I of the Interstate Commerce Act apply to Susquehanna. Its railroad includes terminal facilities for the transportation of its passengers and such transportation includes a contract bus service as an instrumentality or facility for the carriage of its passengers between its transfer point in New Jersey and its terminal in New York. Such bus transportation must be considered as performed by Susquehanna, and is subject to regulation "in the same manner as, the transportation by railroad . . . to which such (bus) services are incidental." 49 U.S.C. § 302(c). See *New York Dock Railway v. Pennsylvania Railroad Co.*, 3 Cir. 1933, 62 F.2d 1010, cert. den. 289 U.S. 750; *United States v. Motor Freight Express*, D.C. N.J. 1945, 60 F.Supp. 288. The Interstate Commerce Commission has regulatory jurisdiction over Susquehanna and its contract bus facility despite the fact that the railroad is a New Jersey corporation whose entire trackage is within that State. *Cincinnati, New Orleans & Texas Pacific Railway v. Interstate Commerce Commission*, 1896, 162 U.S. 184; *Interstate Commerce Commission v. Detroit, Grand Haven & Milwaukee Railway Co.*, 1897, 167 U.S. 633, 642. The Commission has recognized and exercised that jurisdiction. See *New York, S. & W. R. Co., Common Carrier Application* (1942) 34 M.C.C. 581; on rehearing (1946) 46 M.C.C. 713. See also *Commutation Fares*, New York, S. & W. R. Co. (1951) 280 I.C.C. 31. In its Local Passenger Tariff S-W 11, issued September 10, 1960, effective September 21, 1960, under Authority of Special Permission of the Interstate Commerce Commission in Finance Docket No. 20567, New York, Susquehanna & Western Railroad [fol. 75] Company—Abandonment of Operation Jersey City, N.J., dated August 8, 1960, plaintiff carrier advertises its fares for passenger transportation throughout its line extending between New York, N.Y., and Butler, N.J.; an aggregate distance of 37.9 miles. Paragraph 11 of the carrier's Rules and Regulations, published in its said Tariff, is captioned, and reads as follows:

"Motor-Coach Terminal Service—New York, N.Y.

"Available only to passengers holding tickets reading as described in paragraph 1 below, upon payment of charge shown in paragraph 2 below:

"1. To or from stations on the New York, Susquehanna and Western Railroad Company, Babbitt, N.J., and stations West thereof, on the one hand, and New York, N.Y., via the Susquehanna Transfer, N.J., on the other.

"2. Motor-coach fare in each direction between North Bergen, N.J. and New York, N.Y., 25 cents."

Erie's discontinuance of its ferry service pursuant to the provisions of 49 U.S.C. § 13a(1) had deprived plaintiff of the availability of this ferry service for its passenger transportation into and out of New York City. For background history of the Erie-passenger ferry abandonment, see *State of New Jersey, et al. v. United States of America, et als.*, D.C. N.J. 1958; 168 F.Supp. 324, affd. 1959, 359 U.S. 27, reh. den. 359 U.S. 950.

On December 30, 1960 Susquehanna filed with the Interstate Commerce Commission, pursuant to the provisions of section 13a(1) of the Interstate Commerce Act, a Notice that the carrier would discontinue service of all of its passenger trains described as "operating" between Butler, New Jersey and New York City, and serving various intermediate stations in New Jersey en route. A copy of plaintiff's Notice was served by mail, on December 29, 1960, upon the Governor of the State of New Jersey, the Secretary of the Board of Public Utility Commissioners of the State of New Jersey, the Governor of the State of New York, [fol. 76] the Secretary of the Public Service Commission of the State of New York, the Assistant Postmaster General, and the Railway Labor Executives' Association, and posted in each of Susquehanna's railroad stations, in the Port of New York Authority Bus Terminal in New York City, in each of the motor coaches operated by Public Service Coordinated Transport which carry passengers from and to plaintiff's trains, and in each passenger car of each of those trains.

On January 9, 1961, the State of New Jersey and its Board of Public Utility Commissioners filed a petition with the Interstate Commerce Commission praying that an investigation of plaintiff's proposed train discontinuance be entered upon by the Commission, and that plaintiff's Notice be dismissed without prejudice, upon the ground that its case, before the Commission was improperly brought under section 13a(1). To that petition Susquehanna filed an Amended Reply on February 20, 1961, wherein the carrier joined issue upon the contentions made in the petition. By order of Division 4 of the Commission, made on January 18, 1961, the proceeding instituted by plaintiff's Notice was dismissed for lack of jurisdiction because the Commission found that each of the trains proposed to be discontinued by the plaintiff operates solely within the State of New Jersey. The Commission concluded that Susquehanna's Notice was, therefore, improperly filed under section 13a(1) of the Act. On February 20, 1961, the Railroad filed a Petition for Reconsideration of the Commission's order [fol. 77] of January 18, 1961. The Petition for Reconsideration was denied by the Commission's order of May 10, 1961.

The Commission's refusal to reconsider its order denying jurisdiction of the proceeding instituted by the plaintiff under section 13a(1) of the Act constitutes a proper basis for the exercise of the jurisdiction of this Court created by 49 U.S.C. § 17(9) and 28 U.S.C. § 1336. The present action presents the single question whether the provisions of section 13a(1) have been appropriately invoked by the plaintiff for the purpose of effecting a discontinuance of its

¹ Carrier's amended reply to the petition of the State and Board disclosed that day-to-day counts of interstate and intrastate passengers using each of the trains which carrier desired to discontinue showed the following daily averages:

<i>Train No.</i>	<i>Total</i>	<i>Interstate</i>	<i>Intrastate</i>
908	47.7	39.7	8.0
910	126.4	120.1	6.3
916	112.5	91.2	21.3
919	47.9	31.5	16.4
923	120.1	118.6	1.5
929	37.0	34.5	2.5

passenger trains enumerated in the Notice filed with the Commission. The position of the defendants in the case is disclosed in their contention that section 13a(1) is applicable only to the discontinuance of "the operation or service of any train or ferry operating from a point in one State to a point in any other State." Because the trains which plaintiff would discontinue do not actually run across the dividing line between New Jersey and New York, but only between points within the State of New Jersey, defendants argue that application for relief before the Interstate Commerce Commission is governed by subsection 13a(2).² Defendants United States and Interstate Commerce Com-[fol. 78] mission further assert that "the Legislative history of section 13a(1) supports the view that it is intended to allow discontinuance of only trains or ferries, but not of all the rail transportation operation from a point in one State to a point in another State."³ They do not deny

² The Conference Report upon S-3778, 85th Cong. 2d Sess. (13 U.S. Code Cong. & Adm. News, p. 3250), has this to say respecting the proposed new section 13a embodied in section 5 of the Bill: "Paragraph (1) deals with the discontinuance or change of the operation or service of a train or ferry—operating from a point in one State to a point in any other State * * *. A procedure is set up whereby the carrier or carriers concerned may discontinue or change the operation or service (notwithstanding State law) upon giving 30 days' notice to the Interstate Commerce Commission (as well as certain other notice) of intention to do so.

"Paragraph (2) of the proposed new section 13a, * * * deals with the discontinuance or change, in whole or in part, by a carrier or carriers of the same class referred to in paragraph (1), of the operation or service of any train or ferry operated 'wholly within the boundaries of a single State.' The paragraph would operate where such carrier or carriers desire to discontinue or change any such operation or service, and where (1) the discontinuance or change is prohibited by the constitution or statutes of a State, (2) where the State authority having jurisdiction has denied an application duly filed for authority to discontinue or change the operation or service, or (3) where the State authority having jurisdiction shall not have acted finally on such application within 120 days from the presentation thereof. * * *"

³ If the plaintiff intends to terminate *all* railroad transportation over its line between Butler, New Jersey and New York City, the Commission would have clear jurisdiction to entertain its application for leave to do so under section 1(18) of the Act. This Court has already stated in *Board of Public Utility Commissioners v.*

that plaintiff is an interstate carrier, and they concede that it performs its interstate function in part by the use of the contract bus service into and from New York City.

While the defendants are correct in asserting that the trains which the plaintiff seeks to discontinue *more* exclusively within the State of New Jersey, the interstate *transportation* of passengers which the plaintiff is authorized and required by the Commission to provide (49 U.S.C. § 1(4)), is achieved only by means of the combined facilities of those trains and of the bus service which complements them. While it is also true that section 13a(1) contains the significant phrase "the operation or service of any train or ferry," referring to the particular transportation which may be discontinued or changed upon compliance with the other provisions of the section, we are unable to agree with the insistence of defendants that the word "operation" must be equated to "movement." There being no provision in the Act which makes such definition mandatory, we are at liberty to apply the ordinary meaning of the term, which, when used intransitively, means to work, act, or function. To strictly construe 13a(1) as applicable only to a train or ferry as an instrumentality of interstate transportation is to disregard other provisions of the statute, and thwart the apparent purpose of the Congress in adopting it. In construing remedial legislation, narrow or limited construction is to be eschewed. Rather, in this field, liberal construction in the light of the prime purpose of the legislation is to be employed. *St. Mary's Sewer Pipe Co. v. Director*, 3 Cir. 1959, 262 F.2d 378; citing

United States, 1957, 158 F.Supp. 98, at page 100, that "It is equally sound that the Commission possesses the right to allow complete abandonment of a railroad branch line although the latter be located wholly within a State. *State of Colorado v. United States*, 1926, 271 U.S. 153, * * *. Under that opinion if the contemplated stoppage of the Weehawken passenger ferry effects the complete abandonment of a line of railroad or portion of a line of railroad, the Commission's action was proper. If it is merely the elimination of part of the service of that line, the Commission has no justification for assuming control of the proceeding." That language was used before the new section 13a became law. We are not here called upon to determine whether the Commission in the present case derives jurisdiction from § 1(18).

Lilly v. Grand Trunk Western R. Co., 1943, 317 U.S. 481; *Swinson v. Chicago, St. Paul, M. & O. Ry.*, 1935, 294 U.S. 529; *Sablowsky v. United States*, 3 Cir. 1938, 101 F.2d 183. The Act must be read and considered as a whole in the light of national transportation policy. *American Trucking Associations, Inc. v. United States*, D.C. D.C. 1959, 170 F.Supp. 38.

In *Board of Public Utility Commissioners of the State of New Jersey, et al. v. United States*, 1957, 158 F.Supp. 98, this Court held that the proposed discontinuance by the New York Central Railroad Company of its passenger ferries between points in New Jersey and the City of New York would constitute but a partial abandonment of a portion of a line of its railroad, which the Interstate Commerce Commission then had no authority to permit, because 49 U.S.C. § 1(18) provided only for the abandonment of "all [fol. 80] or any portion of a line of railroad." Accordingly, this Court set aside a certificate granted by the Commission, authorizing the railroad to discontinue its passenger service while continuing to transport freight by surface vessel across the Hudson River. In that case the adoption of the Transportation Act of 1958 was foreseen by the Court when it said, at p. 103 of the opinion: "The Congress may in its wisdom decide to grant the requisite authority, although as yet there is no intimation of this from the legislative history, but until such time, the Commission, strictly a creature of its creating statute, is without the power to permit the discontinuance of this partial service." It is quite obvious that this Court's construction of section 1(18) of the Transportation Act of 1920 emphasized the need of congressional legislation to permit of the very relief which this Court had found unavailable. The answer to that need was ultimately given in section 13a(1) of the Transportation Act of 1958. Accordingly, by invoking the provisions of this newly added section, other railroads successfully achieved the discontinuance of passenger ferry service across the Hudson River, while still continuing to operate as interstate common carriers by rail. (*State of New Jersey, et al. v. United States, et al.* (supra).) It seems to follow inevitably that the contract buses, by means of which plaintiff had been performing its service as an inter-

state carrier, must be considered, as were the ferry facilities, to constitute a portion of plaintiff's line of railroad within the jurisdiction of the Commission.

The exclusiveness of the Commission's jurisdiction over terminal facilities and interterminal services of interstate carriers was emphasized in *Central Transfer Co. v. Terminal Railroad Association of St. Louis*, 1933, 288 U.S. [fol. 81] 469, and in *City of Chicago v. Atchison, T. & S. F. Ry. Co.*, 1958, 357 U.S. 77. In the latter case a municipal ordinance required that a motor carrier serving interstate connecting railroads for the transportation of passengers across the City, first obtain a certificate of convenience and necessity from the Commissioner of Licenses, and the approval of the City Council, before it could lawfully engage in that business. The United States Supreme Court held that the Interstate Commerce Act, 49 U.S.C. § 1, et seq., precluded the City from exercising any veto power over the transfer service when performed by the interstate railroads or by their chosen agents because such service was (p. 86) "at least authorized, if not actually required, under the Act as a reasonable and proper facility for the interchange of passengers and their baggage between connecting lines," and "§ 302(c) of the Act provides that motor vehicle transportation between terminals, whether performed by a railroad or by an agent or a contractor of its choosing, shall be regarded as railroad transportation and shall be subject to the same comprehensive scheme of regulation which applies to such transportation." Further, at pp. 87 and 88 of the same opinion, we find an interpretation of congressional policy in the following language of Mr. Justice Black: "The various provisions set forth above manifest a congressional policy to provide for the smooth, continuous and efficient flow of railroad traffic from State to State subject to federal regulation. In our view it would be inconsistent with this policy if local authorities retained the power to decide whether the railroads or their agents could engage in the interterminal transfer of interstate passengers. . . . National rather than local control of interstate railroad transportation has long been the policy of Congress. It is not at all extraordinary that Congress [fol. 82] should extend freedom from local restraints to

the movement of interstate traffic between railroad terminals."

In *Transit Commission v. United States*, 1933, 289 U.S. 121, the language of section 1(18) of the Act was held to apply to a trackage agreement which enabled an interstate carrier to extend its traffic beyond its own terminus over the line and to and from the terminus of another carrier. At page 127 of the opinion in that case, the Court states that: "Prior to the Transportation Act, 1920, regulations coincidentally made by federal and state authorities were frequently conflicting, and often the enforcement of state measures interfered with, burdened and destroyed interstate commerce. Multiple control in respect of matters affecting such transportation has been found detrimental to the public interest as well as to the carriers. Dominant federal action was imperatively called for. * * * (Continuing on p. 128.) * * * The Act, including paragraph (18) and related provisions, is construed to make federal authority effective to the full extent that it has been exerted and with a view of eliminating the evils that Congress intended to abate." See also *Southern Railway Co. v. Reid*, 1912, 222 U.S. 424.

All parties concede that the question which we are called upon to answer is whether, under the circumstances disclosed in *Susquehanna's* petition to the Commission, relief should be afforded under subdivision (1) or under subdivision (2) of section 13a of the Act. Plaintiff has been, and is now discharging its obligation as an interstate railroad common carrier by a combination of train and bus service, furnishing passenger carriage between New York and New Jersey. The bus service complements that of the train; the train service complements that of the bus. In combination the two facilities operate from a point or points in one [fol. 83] State to a point in another State. A construction of the language employed in subdivision (1) of section 13a which would involve a divorcement or limitation of the jurisdiction of the Commission, and the intrusion of that of the Board of Public Utility Commissioners over the existing facilities employed by *Susquehanna*, would preclude the attainment of the objective obviously contemplated by the Congress.

We, therefore, conclude that the Commission had jurisdiction over the proceeding instituted by Susquehanna under the provisions of section 13a(1) and that its order of January 18, 1961 refusing to take jurisdiction thereof was contrary to law, and should be reversed.

McLAUGHLIN, Circuit Judge, dissenting.

Prior to the enactment of Section 13(a)(1) of the Interstate Commerce Act there was no authority then existing which countenanced abandonment by a carrier of its passenger ferry service between New Jersey and New York. Board of Public Utility Commissioners of New Jersey v. United States, 158 F.Supp. 98 (D.C. N.J. 1957). Thereafter the present Section 13(a)(1) was added to the Interstate Commerce Act, 49 U.S.C.A. Section 13(a)(1) effective August 12, 1958. That specifically gave carriers, subject to the mechanics of the section, the right "*to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State* * * * ." (Emphasis supplied.)

There is no denial that the section was directed to a particular train or ferry and the legislative history makes this crystal clear. The section was used almost immediately [fol. 84] for its avowed purpose i.e. to justify the extinguishment of the passenger ferry with which the Board of Public Utility Commissioners, etc. litigation, supra, was concerned and of the Erie passenger ferry (also used by complainant). See State of New Jersey, et al. v. United States, et als., 168 F.Supp. 324 (D.C. N.J. 1959) (New York Central case); State of New Jersey, et al. v. United States, et al. (Erie and New York, Susquehanna case), 168 F.Supp. 342 (D.C. N.J. 1959). As finally passed, there was not the slightest idea that 13(a)(1) could be at all available regarding any train which operates within a State, whose origin and destination are within the State—that is, any train with intrastate characteristics—together with the facilities used by the train, shall be completely under the authority of the State public utilities commission, and shall not be in any way affected by the language of this particular pro-

posals, to which the Senator from Georgia objects." Declaration by Senator Smathers, author of the then bill, 104 Cong. Rec. June 11, 1958 p. 10852. At p. 10854 of the same record Senator Smathers stated an underlying principle of the amendment to be that "If a train originates within a State . . . and ends within a State, without crossing a State line, that particular train could be discontinued only with the approval of the State regulatory agency, under the amendment." There was never any change in that fundamental concept, suggested or authorized. Throughout the legislative history it is plain that, aside from a particular train, the only other item to be covered by the amendment was a ferry. Buses were neither mentioned or considered. It definitely was never intended by Senator Smathers that an element foreign to the avowed objective of the legislation be concealed within his frank commitment and which would be urged later as coming under 13(a)(1). The [fol. 85] Interstate Commerce Commission itself, which had so readily acquiesced in the end of the mentioned passenger ferry service between New Jersey and New York, at no time ever attempted to distort the meaning of 13(a)(1) by construing it as allowing discontinuance of purely intrastate trains because buses took passengers from them at the end of the railroad in New Jersey and transported them to New York.

The statute is a lean, lucid law. It cannot be misconstrued as it stands. The majority opinion refuses to take on that impossible task. So it rests its reversal of the Interstate Commerce Commission on the proposition that what the latter does in its decision is "thwart the *apparent* purpose of Congress in adopting it." (Emphasis supplied.) Actually, the true purpose of Congress is expressed in the unmistakable language of 13(a)(1) itself. That language cannot be wrenched apart to absorb the expedient endeavor to do now what was never contemplated when the amendment was enacted.

It is argued that "bus" must be taken as included in the "service of any train". That cannot conceivably make sense where "ferry", no more or less important in the circumstances than "bus", was deliberately and directly named and the phrase "service of any" applied to it ex-

actly as to "train". If 13(a)(1) had been meant to contain the power to wipe out an entire intrastate railroad passenger service by tying it into the interstate connecting buses, the word "bus" would have been placed in the amendment as was the word "ferry". If that had occurred, in all probability, the amendment would never have passed the Senate. It does seem rather conclusive that all of the legislative history re the amendment, both affirmative and negative, vividly establishes that its language is meaningful and is exactly what was agreed to.

[fol. 86] The railroad objects to the definition of a "train" as given by the United States Supreme Court in *United States v. Erie RR.*, 237 U.S. 402, 407 (1915), where the Court said that a train " * * * consists of an engine and cars which have been assembled and coupled together for a run or trip along the road." The railroad would put this in the same category as Miss Stein's "a rose is a rose * * *." It might be noted that to date, a rose is still a rose. Also that as far as Section 13(a)(1) of the Interstate Commerce Act is concerned, within its categorically limited purpose and language, a "bus" is neither " * * * the operation or service of any train or ferry operating from a point in one State to a point in any other State * * *."

For plaintiff to prevail the Interstate Commerce Commission must be held to have grievously erred in law by concluding it had no jurisdiction to permit the railroad to divest itself of its passenger service. Even on this legal question, the Commission's deep, special knowledge of the problem in this case is of the utmost importance. Admittedly it had no right to sanction abandonment of New Jersey-New York harbor ferries until Section 13(a)(1) became the law. Admittedly it was completely familiar with the Smathers bill. It knew that under the resultant amendment to the Act, it was given the power to approve the discontinuance of a single train or ferry. It knew the amendment went no further than that. It knows that the kind of control involved in this action or otherwise was never sought for the Commission in 13(a)(1) by complainant, other carriers or anyone else. The Commission therefore rightly refused to accept complainant's present fantastic interpretation of Section 13(a)(1) proffered, not with any claim that it was ever

dreamt of when 13(a)(1) was passed, but under the trans-[fol. 87] parently unsupportable suggestion that "bus" must be taken as part of 13(a)(1) since the latter is "remedial legislation". In view of the success in obtaining legislation to do away with the ferries an equivalent result might be obtained as to buses. But meanwhile, the passenger trains, which plaintiff seeks to discontinue, operate solely within the State of New Jersey and the matter of their discontinuance is not within the jurisdiction of the Interstate Commerce Commission.

I would therefore uphold the Commission's dismissal of the proceeding.

[fol. 92] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action, No. 401-61

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, STATE OF NEW JERSEY, and BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, Defendants.

FINAL JUDGMENT—January 9, 1962

This matter having come on for trial in the presence of Lum, Biunno & Tompkins (by Vincent P. Biunno, Esq.), attorneys for plaintiff, David M. Satz, Jr., Esq. (by Raymond A. Young, Esq.), United States Attorney, and H. Neil Garson, Esq., attorneys for the defendants United States of America and Interstate Commerce Commission, with John H. D. Wigger, Esq., Lee Loevinger, Esq., C. H. Johns, Esq., and Robert W. Ginnane, Esq., of Counsel with the

defendant United States of America, and David D. Furman, Esq. (by Richard Green, Esq.) Attorney General of the State of New Jersey, attorney for the defendant State of New Jersey and Board of Public Utility Commissioners of the State of New Jersey; and the court having examined and considered the record and order before it, and having heard and considered the argument and briefs of counsel thereon.

It is, on this 9th day of January, 1962, Ordered that final judgment be and it hereby is entered, determining that the provisions of section 13a(1) of the Interstate Commerce Act (49 U.S.C. sec. 13a(1)) were appropriately invoked by the plaintiff for the purpose of effecting a discontinuance of its passenger trains enumerated in the Notice filed with the defendant Interstate Commerce Commission; that said Commission had jurisdiction over the proceedings so instituted and that its order of January 18, [fol. 93] 1961, under review, was contrary to law and is hereby permanently suspended, enjoined, annulled and set aside;

And good cause appearing it is further ordered that the plaintiff railroad, its officers, agents, servants and attorneys are hereby restrained and enjoined from discontinuing passenger service under its said Notice or under this judgment, until the further order of this Court, pending appeal by the defendants to the Supreme Court of the United States, *without costs.* R.J.W., Jr.

Philip Forman, C.J., Reynier J. Wortendyke, Jr., D.J.

Circuit Judge Gerald McLaughlin notes his dissent, except as to the foregoing restraint.

[fol. 95]

IN UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action No. 401-61

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed March 6, 1962

I. Notice is hereby given that the State of New Jersey and the Board of Public Utility Commissioners of the State of New Jersey, appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on January 9, 1962.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States.

III. The following question is presented by this appeal:

Whether the Interstate Commerce Commission lawfully dismissed the railroad's notice of train discontinuance for lack of jurisdiction under section 13a(1) of Title 49 United States Code Annotated when the trains operate exclusively in the State of New Jersey?

Respectfully submitted,

Arthur J. Sills, Attorney General of New Jersey,
Richard F. Green and William Gural, Deputy
Attorneys General of New Jersey, Attorneys for
Appellants, State of New Jersey and Board of
Public Utility Commissioners of the State of
New Jersey.

[fol. 97]

[Handwritten notation—Dec—30 '60]

BEFORE THE INTERSTATE COMMERCE COMMISSION

STATEMENT
IN RELATION TO PROPOSED DISCONTINUANCE
OF TRAIN SERVICE

Title 49, Chapter I, Subchapter A, Part 43, §43.5

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY

Leon Leighton
Counsel
6 East 45th Street
New York 17, N. Y.

[fol. 98] (a) Exact corporate name and general office address of the carrier proposing the discontinuance:

New York, Susquehanna and Western Railroad Company
160 Market Street, Paterson 1, N. J.

(b) Name, title and post office address of counsel to whom correspondence regarding the notice should be addressed:

Leon Leighton, Counsel
6 East 45th Street
New York 1, N. Y.

(c) Complete description of the present service of the trains involved and of the discontinuance proposed:

New York, Susquehanna and Western Railroad Company (hereinafter called "Susquehanna") presently operates three trains in each direction between Butler, N.J., and Port of New York Authority Bus Terminal, in the Borough of Manhattan, New York City, N.Y. The total distance is 36.2 miles. The schedule of these trains is shown on

Susquehanna's timetable effective November 28, 1960, which is annexed as Exhibit 1 hereto.

The train service operates daily except Saturdays, Sundays and holidays, during commuter hours only. The three eastbound trains leave Butler between 6:26 and 7:14 a.m., arriving New York between 8:00 and 8:43 a.m. The three westbound trains leave New York between 4:50 and 5:30 p.m., arriving Butler between 6:22 and 7:02 p.m. Each train carries passengers only; no mail, baggage or express is handled. On Good Friday, Election Day, December 23 and December 30, Train 923, leaving New York at 5:17 p.m. and arriving Butler 6:42 p.m. does not operate. In place thereof, Train 915 is operated, leaving New York at 1:10 p.m. and arriving Butler 2:39 p.m.

A complete discontinuance of the operation of each of the foregoing trains is sought, so that Susquehanna will operate no passenger service whatsoever.

Each train is presently operated by a single-unit diesel engine, with a single trailing passenger car. The crew on each train consists of an engineer, a fireman, a conductor and a brakeman.

[fol. 99] The operation is by rail to a point called Susquehanna Transfer, located in the Township of North Bergen, N. J., thence to Port Authority Bus Terminal by contract bus operated exclusively for Susquehanna's passengers by Public Service Coordinated Transport. The foregoing operation makes these interstate trains within the purview of subdivision (1) of Section 13a of the Interstate Commerce Act. See extracts from reports of this Commission approving this contract bus operation, and from opinion of the United States Supreme Court, in Exhibit 2 hereto.

(d) A complete statement of the reasons for the proposed discontinuance or change of operation or service.

Section 13a(1) of the Interstate Commerce Act provides that, upon the filing of a notice of discontinuance of a train, the Commission may require the continuance of operation or service of such train for a period of one year only if "the Commission finds that the operation or service of such train or ferry [a] is required by public convenience

and necessity *and* [b] will not unduly burden interstate or foreign commerce" (italic supplied).

The basic reason for the proposed discontinuance is that finding [b] cannot be made in this case. The operation of Susquehanna's passenger service has been an undue burden on interstate commerce since 1947, and its continued operation threatens to drive Susquehanna into bankruptcy.

The Commission's inability to make finding [b] would in and of itself be a sufficient reason for not requiring the continuance of operation of the trains, even if the Commission should make finding [a]. However, even though finding [a] might have been warranted prior to November 8, 1960, it has not been warranted since that date in view [fol. 100] of the decision and order of the Commission in Finance Docket No. MC-228 (Sub No. 25) and related applications, *Hudson Transit Lines, Inc. Extension--Oakland, N. J.*

A. The operation of these trains will unduly burden interstate commerce

1. In 1953, Susquehanna emerged from reorganization under §77 of the Bankruptcy Act, after a proceeding which had lasted for sixteen years. Since that time, Susquehanna's out-of-pocket losses in its passenger operation have absorbed an increasingly disproportionate share of its freight earnings. This is shown on the tabulation for those years of the actual out-of-pocket passenger losses, the total freight earnings, and the percentages of the latter required to absorb the passenger losses (Exhibit 3 hereto). It will be noted that the percentages used as the numerator are the *actual out-of-pocket* losses. If the losses were computed on the basis of the formula approved by this Commission, which was reiterated in No. 31,954, *Railroad Passenger Train Deficit* (1959), they would have exceeded the freight earnings by a substantial margin in each year.

2. This drain on Susquehanna's earnings has now reached the point where it will force Susquehanna into bankruptcy again, unless the situation is immediately remedied. As is shown on Exhibit 3, Susquehanna's freight operations have shown *deficits* of \$71,316 for 1958 and

of \$185,045 for 1959. The addition of the out-of-pocket deficits in the passenger operation of \$307,979 for 1958 and of \$269,767 for 1959 (see Exhibit 3) has resulted in total deficits before fixed charges of \$379,295 for 1958 and of \$454,812 for 1959 (Exhibit 6 hereto). Susquehanna's deficit before fixed charges for the nine months ended September 1960 was \$200,772 (Exhibit 6), of which \$86,040 [fol. 101] represented the passenger deficit and \$114,732 represented the freight deficit. This experience for the past two and three-quarter years is in marked contrast with the Commission's forecast. In approving Susquehanna's reorganization plan, the Commission had found "that the reorganized Company's expectable earnings available for interest and other corporate purposes in a normal year . . . may be expected to range from \$700,000 to \$775,000." *New York, S. & W. R. Co. Reorganization*, 261 I.C.C. 101, 106 (1945). This finding was specifically approved by the bankruptcy court having jurisdiction over Susquehanna's reorganization, and by the United States Court of Appeals. *In re New York, Susquehanna & Western R. Co.*, 103 F. Supp. 981, 983 (D.N.J. 1951), *affd.* on opinion of Judge Smith below (196 F.2d 216 [C. A. 3d 1952]).

3. The fact that Susquehanna "did not have sufficient overall income to safely carry its passenger deficit, and that extraordinary consideration should be given to the financial aspects of its operations," has been pointed out by the Commission, by the Appellate Division of the New Jersey Superior Court, and by the New Jersey Board of Public Utility Commissioners.

i. The statement of this Commission is found in the report and order of Division 4 in Finance Docket No. 20266, *New York, Susquehanna & Western Railroad Company Abandonment of Operation, Jersey City, N. J.* (decided August 8, 1960), the pertinent extracts from which are set forth on Exhibit 4 hereto.

ii. The foregoing report of Division 4 quotes from the opinion of the Appellate Division of the New Jersey Superior Court in *Susquehanna, etc. Assn. v. Bd. of Pub. Util. Comm'rs*, 55 N. J. Super. 377, 151 A. 2d 9 (App. Div.

[fol. 102] 1959). Extracts from this opinion (which incorporate the findings of the New Jersey Board of Public Utility Commissioners) are set forth on Exhibit 5 hereto.

4. The report in Finance Docket No. 20266, *supra*, reflects Susquehanna's operations through 1958, and its balance sheet as of June 30, 1958. The record in that proceeding concluded with operations for 1958.

i. In its operations since that date, Susquehanna's railroad operations failed to earn its reduced fixed charges by \$588,354 in the year 1959, and by \$305,346 in the first nine months of 1960. This is shown on the income statement for the calendar years 1958 and 1959 and the first nine months of 1960 (Exhibit 6 hereto).

ii. Susquehanna's balance sheet as of September 30, 1959 showed a working capital deficit of \$409,444 (Exhibit 7 hereto).

5. For many years Susquehanna tried to alleviate the passenger deficit, which is chronic among commuter roads in the Eastern Territory, by improving passenger service in the hope that it would attract additional business.

i. Up to 1940, Susquehanna's trains all originated and terminated at Jersey City, whence service was afforded by connecting ferry and by Hudson & Manhattan Railroad to downtown Manhattan. In that year, Susquehanna established the transfer point at Susquehanna Transfer, from which connecting bus service was given to the Port Authority Bus Terminal in midtown Manhattan. This Commission found that the new service was a great convenience to the passengers, saving them a substantial amount of travel time. *New York, N. & W. R. Co. Common Carrier Application*, 46 M.C.C. 713, 715-16 (1946).

ii. At about the same time, an extension from the main line at Broadway Paterson to Straight Street in Paterson, which had been abandoned some years before, was put back [fol. 103] into service, in order to afford ready access to the central portion of Paterson.

iii. Prior to these improvements in service, Susquehanna had operated only ten trains in each direction to and from

New York. After the inauguration of the bus service, and the rebuilding of the Straight Street extension, Susquehanna added twenty-four trains in each direction between Paterson and the Port Authority Bus Terminal (46 M.C.C., *supra*, at pp. 717-18).

iv. In 1950, Susquehanna purchased four new RDC air conditioned cars for \$540,000, to perform the service on this Paterson-Port Authority Bus Terminal run. In 1951, Susquehanna purchased sixteen new stainless steel coaches for \$1,325,000, to perform the service on the Butler-Jersey City run. The latter coaches were not air conditioned but were otherwise thoroughly up to date and modern, and constituted more than half of the thirty modern coaches among the 1,300 in the New Jersey suburban service.

v. If the foregoing \$1,865,000 had been used to retire bonds, instead of for the purchase of new equipment, Susquehanna would have been saving \$121,200 per year in fixed interest payments. (Although the bonds bear interest at 4%, their market price during the period did not exceed 60.) Despite this substantial investment in new equipment, Susquehanna's passengers fell off from 1,888,487 in 1949 to 1,467,295 in 1956.

6. In 1956, Susquehanna realized that the only solution for its passenger deficit problem was to apply for a curtailment of service to that which was absolutely essential. Its passenger operations then consisted of thirty trains in each direction on weekdays, eighteen trains in each direction on Saturdays, and seventeen trains in each direction on Sundays. At that time, other common carrier [fol. 104] service was not available in the sector of Susquehanna's territory west of Hawthorne. Susquehanna therefore proposed to operate four trains from Butler to New York during the morning commuter hours, and four trains from New York to Butler during the evening commuter hours. These trains would of course include the area east of Hawthorne, where other common carrier service was available. Application for such curtailment was made to the New Jersey Board of Public Utility Commissioners in April 1956.

7. Extended hearings were held before the Board, the minutes running over 3,000 pages, and the exhibits to 225. The hearings were not concluded until April 1957.

8. At that time, the New Jersey Legislature passed a concurrent resolution directing the Board of Public Utility Commissioners to permit no further curtailment of passenger rail service in New Jersey pending the presentation of the final report of the New York-New Jersey Metropolitan Transit Commission to the Governors and Legislators of New York and New Jersey. In obedience to this resolution, the New Jersey Board suspended all further proceeding on Susquehanna's application.

9. Susquehanna appealed this order to the New Jersey Supreme Court. In November 1957, that Court reversed the order of the Board and remanded the matter to the Board for determination on the merits. *In re N. Y. Susquehanna & Western R. R. Co.*, 25 N. J. 343, 136 A. 2d 408 (1957).

10. The Board thereupon authorized Susquehanna to reduce its passenger service to twelve trains in each direction on weekdays, seven trains eastbound and five trains westbound on Saturdays, and four trains in each direction on Sundays. Susquehanna appealed this decision to the Appellate Division of the New Jersey Superior Court. In [fol. 105] May, 1959, that Court modified the Board's order, to provide for further curtailment of the service to seven trains in each direction on weekdays, and two eastbound trains on Saturdays. *Susquehanna, etc. Assn. v. Bd. of Pub. Util. Comm'rs*, 55 N. J. Super. 377, 151 A. 2d 9 (App. Div. 1959).

11. The long delay in completing these legal proceedings in New Jersey caused Susquehanna to sustain out-of-pocket losses of \$465,000 during the period from April 1956 to May 1959, in the operation of trains which the Board of Public Utility Commissioners or the Appellate Division of the Superior Court finally concluded were not required by public convenience and necessity.

12. The impact of this burden made it necessary for Susquehanna to seek further relief. By decision and order

of the New Jersey Board of Public Utility Commissioners in Docket No. 11550 (decided December 21, 1959), Susquehanna was authorized to reduce the service to four trains in each direction on weekdays only. By subsequent order of the New Jersey Board of Public Utility Commissioners in Docket No. 11884 (decided July 14, 1960), Susquehanna was authorized to reduce the service to the present operation of three trains in each direction on weekdays only.

13. As is more fully set forth in the answer to Question (h) below, the operation of the three pairs of trains which are involved here shows the following actual out-of-pocket losses for the years 1958 and 1959 and the first nine months of 1960:

[fol. 106]

	1958	1959	First Nine Months—1960
908)	\$ 54,108	\$37,010	\$32,120
919)			
910)	30,044	16,523	13,435
923)			
916)	52,662	34,979	12,783
929)			
Total	\$136,814	\$88,512	\$58,338

14. The out-of-pocket loss declined from \$136,814 in 1958 to \$88,512 in 1959. If the first nine months of 1960 are projected to an annual basis, the actual out-of-pocket loss in that year would be \$77,784, a still further reduction. These reductions resulted from the curtailments of service authorized by the New Jersey Board of Public Utility Commissioners which are described in ¶12, *supra*.

15. However, the foregoing reduction in losses does not accurately reflect the undue burden on interstate commerce resulting from this situation, because the reduction was predicated upon a temporary reduction in the cost to Susquehanna of using the Erie passenger facilities at Jersey City, N. J., which would not continue in the future. This was fully treated in the Commission's report in Finance Docket No. 20266, *New York, Susquehanna & Western Railroad Company Abandonment of Operation, Jersey City, N. J., supra*.

i. For a period of years, Susquehanna operated its passenger trains into Jersey City pursuant to agreements (the last of which was effective March 1, 1940), by which Susquehanna was permitted to use the Erie's trackage from Croxton Yard to Jersey City, its terminal facilities at Jersey City, its ferry, and its New York City passenger station. The rental for this was \$42,500 per year. Finance Docket No. 20266, *supra*, page 3. Additional payments for [fol. 107] various services brought the total cost to about \$77,000 per year.

ii. The foregoing agreement was terminated in September 1955, but the parties agreed to continue the existing arrangement at a rental of \$100,000 a year. Payments were made on that basis until the discontinuance of the Erie ferry operation in December 1958. Finance Docket No. 20266, *supra*, pp. 3-4.

iii. Since December 1958, Susquehanna has been tendering rental payments at the rate of \$30,000 per year, and Erie has been accepting these payments on account. Subsequent to that date, Erie operated all of its passenger trains to and from the Hoboken, N. J., terminal of Lackawanna, so that Susquehanna remained as the only user of Erie's passenger terminal facilities. Erie contended that the \$30,000 rental being paid was grossly inadequate, that a fair and reasonable rental was about \$197,000, and asked that the Commission fix the rental at a proper amount. Finance Docket No. 20266, *supra*, p. 4.

iv. This application by Erie to fix a proper rental was not pressed only because the Commission permitted Susquehanna to abandon its use of the Jersey City facilities. Finance Docket No. 20266, *supra*, pp. 4-5.

16. The operating results shown in ¶13, *supra*, were based on the rental of \$100,000 actually being paid by Susquehanna for the year 1958, and on the rental of \$30,000 actually being paid by Susquehanna for the year 1959 and for the first nine months of 1960. If Susquehanna had been required to pay the rental of \$100,000 in 1959 and 1960, its annual out-of-pocket loss would have been \$70,000 greater. If Susquehanna had been required to pay the

rental of \$197,000 demanded by Erie, its annual out-of-pocket loss would have been increased by an additional \$97,000.

[fol. 108] 17. The report of the Commission in Finance Docket No. 20266, *supra*, indicates that it found substantial validity in Erie's claim that the rental of \$30,000 was grossly inadequate, and that if the Commission were called upon to fix the rental it might well fix it at a figure between \$100,000 and \$197,000. See extracts from this report, which are set forth on Exhibit 8 hereto.

18. Susquehanna realized that it could not continue indefinitely to use the Erie's Jersey City trackage and passenger facilities at the rental of \$30,000, which the Susquehanna tendered unilaterally. In order to avoid the possible hazard of an annual rental in the range of \$100,000 to \$197,000, Susquehanna applied to the Commission for permission to abandon the foregoing operation. That application was granted by Division 4 in Finance Docket No. 20266, *supra*. It became effective on September 21, 1960.

19. Exhibit 9 hereto gives Susquehanna's forecast of the results on an annual basis of what its passenger operations will be after abandonment of the Jersey City facilities. The expenses shown on the exhibit are the actual current expenses. The revenues are a projection on an annual basis of the actual revenues for the two five-day periods commencing respectively on October 17 and October 24, 1960. This exhibit is summarized below:

	908 & 919	910 & 923	916 & 929	Total
Expenses	\$60,755	\$60,960	\$60,547	\$182,262
Revenues	12,578	33,059	19,411	65,048
<hr/>				
Out-of-pocket loss	\$48,177	\$27,901	\$41,136	\$117,214

20. The annual deficit of \$117,214 after abandonment of the Jersey City facilities is \$39,430 greater than the annual deficit of \$77,784 prior to abandonment of the Jersey City facilities (see ¶14, *supra*). But this increase in the deficit is still substantially less than the rental of between \$100,000

[fol. 109] and \$197,000 which the Commission would in all probability fix for the use of Erie's facilities if Susquehanna continued to use them (see ¶17, *supra*).

21. This out-of-pocket loss of \$117,214 on passenger operations cannot be absorbed by Susquehanna; in view of the fact that its freight earnings show a deficit.

R. The operation of these trains is not required by public convenience and necessity.

22. When Susquehanna submitted its last application to the New Jersey Board (described in ¶12, *supra*), other common carrier service was still not available in the sector of Susquehanna's territory west of Wortendyke. While Susquehanna had applied to the New Jersey Board for complete discontinuance of Service, Susquehanna suggested that disposition of the application respecting the present six trains be deferred pending this Commission's determination on applications by three bus companies to serve that area. The application of Hudson Transit Lines was granted by the Commission on November 8, 1960. M.C.C. 228 (Sub-No. 25) and related applications: *Hudson Transit Lines, Inc. Extension—Oakland, N. J.* Inter-City Transportation Company (another of these bus lines) has extended its operations in another part of this area. As is more fully explained in the answer to (f) *infra*, other common carrier service is now available throughout Susquehanna's entire territory where it presently renders passenger service.

(c) The names of all railroads interchanging passengers or freight with the subject trains and the points of such interchange:

The subject trains do not interchange passengers with any other railroads. The subject trains do not carry any freight.

[fol. 110] (f) Description of other common carrier service, including service of the same carrier, of the same kind (passenger) rendered by the trains involved, between and at the points described in the notice, and other common carrier service available in the immediate territory?

1. The other common carrier service available in Susquehanna's entire territory is graphically shown on the two maps appended hereto, Exhibit 10A being Bergen County and Exhibit 10B being Passaic County.

2. A detailed comparison of the other common carrier service available at or about the time when Susquehanna's present trains are operated is appended hereto, as follows:

Exhibit-	Territory
11A	Oakland, Franklin Lakes and Wyckoff
11B	Wortendyke and Midland Park
11C	Hawthorne, Paterson and East Paterson
11D	Rochelle Park and Maywood

These comparative statements have been prepared in the following manner:

i. The average number of daily passengers on each of Susquehanna's trains is taken from the passenger counts which are Exhibits 13 hereto.

ii. The letters PABT are used to designate the Port of New York Authority Bus Terminal, the New York City terminus of all of Susquehanna's trains and of all bus lines involved.

iii. The schedules of the various bus companies and of the Erie Railroad are taken from the timetables in Exhibits 12. These are the actual timetables presently in effect, except that the timetable of Hudson Transit Lines is its proposed timetable which was marked Exhibit 15 in MCC 228 (Sub-No. 25), *supra*.

3. Detailed comparisons are not shown for the bus and rail service available from Butler and Pompton Lakes, [for 111] from Hackensack, or from Bogota, Ridgefield Park and Little Ferry. The reason is that the average number of passengers to and from each of these stations is less than one per day. However, the common carrier service available is shown on the maps (Exhibits 10) and on the timetables (Exhibits 12).

4. A detailed comparison of the intermediate local bus service available to Susquehanna's passengers is likewise not shown, because only a nominal number of passengers travel between the respective local points. However, the availability of other common carrier service is shown on the maps (Exhibits 10) and on the timetables (Exhibits 12).

5. Timetables of these other common carriers are appended hereto as the following exhibits:

Exhibit	Carrier	Points Served
12A	Erie-Lackawanna RR (Main Line)	Hawthorne and Paterson
12B	Erie-Lackawanna RR (Greenwood Lakes Division)	Pompton Lakes
12C	New Jersey & New York Railroad	Hackensack
12D	Manhattan Transit Co.	Paterson and East Paterson
12E	Westwood Transportation Lines	Rochelle Park, Maywood, Hackensack, Bogota, Ridgely Park, Little Ferry
12F	Hudson Transit Lines	Oakland, Franklin Lakes, Wyckoff
12G	Inter-City Transportation Co.—No. 41	Midland Park and Wrendyke
12H	Inter-City No. 30	Paterson
12I	Inter-City No. 35	Rochelle Park, Maywood, Hackensack
12J	Public Service Coordinated Transport—No. 165	Hackensack, Ridgely Park, Little Ferry
12K	Public Service No. 167	Ridgely Park, Little Ferry
12L	Public Service No. 168	Hackensack, Bogota, Ridgely Park, Little Ferry

**Public Service Coordinated Transport—
Local Buses**
(serving all points intermediate
between termini)

Exhibit	Carrier	Points Served
12M	No. 1	Paterson to Bogota
12N	No. 22	Wyckoff to Paterson
12O	No. 44	Rochelle Park to Hackensack
12P	No. 86-88	Butler and Pompton Lakes to Paterson (no other intermediate points)
12Q	No. 70-170	Wyckoff to Paterson
12R	No. 68-120	Paterson to Hackensack

[fol. 412] (g) A statement of the traffic transported on trains for each of the last two calendar years and for the part of the current year for which such information is available.

(AVERAGE ~~NUMBER~~ OF DAILY PASSENGERS)

Train	1958	1959	First Nine Months—1960 (Prior to Discontinuance)	Present Number of Passengers (after discontinuance of Jersey City Operation)
908	139	130	104	48
910	237	186	221	126
916	176	169	299	112
919	146	125	136	48
923	300	262	263	120
929	80	85	123	37
	<hr/> 1,078	<hr/> 957	<hr/> 1,146	<hr/> 491

Details of the passenger counts for the two five-day periods commencing respectively on October 17 and October 24, 1960 (after discontinuance of the Jersey City operation) are annexed as Exhibits 13A, 13B, 13C, 13D, 13E and 13F.

(h) Financial results of operating the trains involved during the periods embraced in the statement submitted

pursuant to paragraph (g) above, segregated in the same manner and to the same extent as required by that paragraph:

It has not been possible to segregate the expenses for each train, because the six trains are run in three couplets. The expenses for operation and maintenance therefore have to be applied to the two trains in each couplet.

	<u>1958</u>		
	908/919	910/923	916/929
Total expenses	\$84,039	\$89,533	\$79,190
Total revenues	29,931	59,489	26,528
Net Loss	\$54,108	\$30,044	\$52,662

	<u>1959</u>		
Total expenses	\$68,344	\$71,573	\$66,191
Total revenues	31,334	55,050	31,212
Net loss	\$37,010	\$16,523	\$34,979

	<u>First Nine Months 1960</u>		
Total expenses	\$55,318	\$60,219	\$53,584
Total revenues	23,198	46,784	40,801
Net loss	\$32,120	\$13,435	\$12,783

The details of the foregoing computations are set forth on Exhibits 14A, 14B and 14C hereto.

i. A copy of the carrier's General Balance Sheet statement as of the latest date available; and of its income statements for each of the last two calendar years and for that portion of the current year for which such information is available;

Annexed hereto as Exhibit 7 is the carrier's General Balance Sheet statement as of September 30, 1960. Annexed hereto as Exhibit 6 is the carrier's income statements

for the calendar years 1958 and 1959 and for the first nine months of 1960.

j. Annexed hereto is a certificate by E. H. P. Gilman, Assistant to the President of Susquehanna, that (a) copy of the notice and of the "Statement in relation to proposed discontinuance of train service" have been mailed to the Governor and the Board of Public Utility Commissioners of the State of New Jersey, and to the Governor and the Public Service Commission of the State of New York, the two States in which such trains operate; (b) that such notice has been posted in a conspicuous place in each station, depot, or other facility involved, including each passenger car on trains affected, which certificate includes information of the date or dates on which the notice and statement were mailed and the date or dates on which the notice was posted as aforesaid; and (c) that a copy of the [fol. 114] notice and statement were served on the Assistant Postmaster General, Bureau of Transportation, Washington 25, D. C., and the Railway Labor Executives' Association, Washington 1, D. C.

(k) A map showing the geographical situation of the line over which the trains operate is annexed hereto as Exhibit 15.

New York, Susquehanna and Western Railroad Company, By Ralph E. Sease, President.

[fol. 115] *Duly sworn to by Ralph E. Sease, jurat omitted in printing.*

[fol. 116]

NOV 28 1960
Effective September 21, 1960

General Information

TIME: 12:01 Midnight to 12:00 Noon is indicated by light-faced type.

12:01 Noon to 12:00 Midnight is indicated by heavy-faced type.

HOLIDAYS—The term Holidays referred to in this timetable applies to the following days only: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

THIS COMPANY IS NOT RESPONSIBLE FOR ERRORS in time tables, inconvenience or damage resulting from delayed trains or failure to make connections; schedules are subject to change without notice.

CHILDREN under five years of age are carried free when accompanied by parent or guardian; five years and under twelve, half fare, twelve years of age and over, full fare.

ADJUSTMENT OF FARES—Should any misunderstanding arise with conductors or agents, pay the fare required, take receipt and communicate with General Freight-Passenger Dept., 160 Market St., Paterson 1, N. J.

LOST TICKETS—Proper care should be taken to guard against the loss of tickets, as Railroads are not responsible for lost tickets.

ARTICLES LOST ON TRAINS—When articles are lost on trains or left in waiting rooms or stations, owners should apply to Lost and Found Bureau, Paterson (B'way) Station, SH. 7-7996, or address General Freight-Passenger Dept., 160 Market St., Paterson 1, N. J., giving full description of the property, stating date of loss and number of train.

Tickets of various forms are issued for convenience of patrons between New York and suburban territory.

ONE-WAY TICKET**THIRTY DAY ROUND TRIP TICKET**

10-TRIP BEARER TICKET. Sold daily to or from New York. Good for three months.

40-TRIP MONTHLY TICKET. Valid to and from New York, also between any two stations within any monthly period, as designated by the purchaser.

COMMUTATION TICKETS may be purchased five (5) days in advance of the initial trip. Same may also be purchased by mail. Remittance in the form of money order or personal check should be made payable to the NY&W R.R. Co. and forwarded to the General Freight-Passenger Dept., 160 Market Street, Paterson 1, N. J., along with the following information: name and address of purchaser, type of ticket, stations transportation is requested for, and desired date for initial trip.

FOR INFORMATION ABOUT TRAINS AND FARES, TELEPHONE—

Port Authority Bus Terminal.... LOngacre 5-7040
Gen. Passenger Office..... MUIlberry 4-8245

R. E. SEASE T. B. DWYER
Pres. & Gen. Mgr. Asst. Traffic Mgr.
160 Market St., Paterson 1, N. J.

NEW YORK SUSQUEHANNA AND WESTERN R. R.

SUBURBAN TIME TABLE

Including service to and from

PORT AUTHORITY BUS TERMINAL

PLATFORM #63

New York City

via the

SUSQUEHANNA SHORT CUT

AVAILABLE ONLY TO HOLDERS
OF A NEW YORK TICKET

The Time Shown in this Folder is

LOCAL TIME

REFERENCE MARKS

* See note Train No. 915.

§ Will operate Good Friday, Election Day, Dec. 23, Dec. 30 instead of Train No. 923.

f—Denotes train stops only on signal.

N.B.—Does not carry baggage.

WESTBOUND				
Miles	FROM NEW YORK	WEEKDAYS MONDAY THROUGH FRIDAY EXCEPT HOLIDAYS		
		919 N.B.	923* N.B.	925 N.B.
	Meter Coach Connection Port Authority Bus Terminal 41st St. & 8th Ave., Platform 68 One Block from Times Square...Lv.	PM	PM	PM
0.0		4 50	5 17	5 30
	SUSQUEHANNA TRANSFER. *	5 10	5 37	5 50
				1 30
6.1	North Bergen.....			
6.5	Babitt.....	5 14		
11.1	Little Ferry.....			5 58
11.8	Ridgefield Park.....	5 29		6 00
13.2	Bogota.....	5 23		6 03
13.9	Hackensack.....	5 25		6 06
14.6	Prospect Avenue.....	5 27		6 07
15.4	Maywood.....	5 30	5 32	6 10
16.1	Rochelle Park.....	5 32	5 35	6 12
18.7	East Paterson.....	5 37		6 17
19.3	Vreeland Avenue (Paterson).....	5 39	6 01	6 19
20.5	Paterson (Broadway).....	5 42	6 04	6 22
21.0	Reveride.....	5 45		6 25
22.8	Hawthorne.....	5 48	6 09	6 28
23.4	North Hawthorne.....	5 51	6 12	6 31
25.2	Midland Park.....	5 55	6 15	6 35
26.4	Wortendyke.....	5 58	6 19	6 38
27.9	Wyckoff.....	6 01	6 22	6 41
29.0	Campgaw.....	6 05	6 26	6 45
30.7	Crystal Lake.....	6 07		6 47
32.0	Oakland.....	6 10	6 31	6 50
33.0	West Oakland.....	6 12		6 52
35.0	Pompton Lakes.....	6 16		6 56
37.9	Butler.....	6 22	6 42	7 02
		PM	PM	PM

EASTBOUND				
	TO NEW YORK	WEEKDAYS MONDAY THROUGH FRIDAY EXCEPT HOLIDAYS		
		908 N.B.	910 N.B.	916 N.B.
		AM	AM	AM
	Butler.....Lv.	6 26	6 48	7 14
	Pompton Lakes.....	6 32	6 53	
	West Oakland.....	6 37	6 57	
	Oakland.....	6 37	7 01	7 25
	Crystal Lake.....	6 40		
	Campgaw.....	6 43	7 07	7 31
	Wyckoff.....	6 48	7 10	7 34
	Wortendyke.....	6 49	7 13	7 37
	Midland Park.....	6 52	7 16	7 40
	North Hawthorne.....	6 56	7 20	7 44
	Hawthorne.....	6 58	7 23	7 46
	Reveride.....	7 00		
	Paterson (Broadway).....	7 04	7 29	7 51
	Vreeland Avenue (Paterson).....	7 07	7 32	7 54
	East Paterson.....	7 09		7 56
	Rochelle Park.....	7 14	7 38	8 01
	Maywood.....	7 17	7 41	8 04
	Prospect Avenue.....	7 19		8 06
	Hackensack.....	7 21	7 44	8 08
	Bogota.....	7 23		8 10
	Ridgefield Park.....	7 26		8 13
	Little Ferry.....	7 34		8 15
	Babitt.....	7 38		
	North Bergen.....	7 38		
	Susquehanna Transfer. *	7 40	7 56	8 23
	Meter Coach Connection Port Authority Bus Terminal 41st Street and Eighth Ave. One Block from Times Square	8 00	8 16	8 43
		AM	AM	AM

Susquehanna Motor-Coaches will be open for occupancy at the Port Authority Bus Terminal 5 minutes prior to departure.

[fol. 118]

EXHIBIT NO. 2 TO STATEMENT

Extracts from Commission Reports and United States Supreme Court Opinion

In *New York, S. & W. R. Co. Common Carrier Application*, 34 M.C.C. 581 (1942), on rehearing 46 M.C.C. 713 (1946), the Commission found "that applicant's motor-vehicle operation between Susquehanna Transfer, North Bergen, N. J., and Manhattan, New York, N. Y. . . . is an intraterminal transfer service incidental to its rail service within the meaning of section 202(c)(2), and as such is exempt from regulation under part II of the act. . . ." 34 M.C.C., at p. 586, 46 M.C.C., at p. 725. Extracts from these reports follow.

34 M.C.C., at p. 583:

"Moreover, an express service only without local stops at points other than North Bergen is proposed. North Bergen is a comparatively small point. An express service serving that point only would be neither natural nor practical except as an 'adjunct of something else' or 'subordinate to the general purpose.' That the proposed operation 'results' from the rail operation is evident. We are convinced that it is 'incidental' to transportation by rail within the meaning of section 202(c)(1)."

.

34 M.C.C., at p. 585:

"It is not unreasonable to consider North Bergen as within applicant's terminal area at 'New York.' Because of the urban character of the territory and density of the population, no definite line can be drawn between the residential sections in which applicant originates commuter traffic and the business district to which such passengers move, but there are 26 stations in the 31.8 miles north of North Bergen, at which applicant supplies commuter service, in contrast to only a few stations in the 5.1 miles between North Bergen and Jersey City, and it is clear that,

south-bound, at North Bergen, applicant has already picked up the bulk of its commuter traffic and is entering its destination or terminal area. . . . We conclude that, at North Bergen, applicant has entered its terminal area at New York, and that the proposed service will be an intraterminal operation."

.

34 M.C.C., at pp. 585-6:

" . . . 'Intraterminal transfer' of passengers, by line-haul carriers thereof, is not uncommon and is within the scope of section 202(c). *Michigan Cab Co., Inc., Common Carrier Application, supra*. Ordinarily, as in the case cited, the transfer is between stations of different carriers as part of an inter-line service, but the statute is not so limited and, in our opinion, applies also to intraterminal transfers between stations of the same carrier. It is true that applicant's upper Manhattan bus station is an off-rail facility, but it was established in aid of, and as an incident of, the rail service, and the transfer of passengers between it and the North Bergen or any other common-carrier station within the same terminal area appears to be within the terms of section 202(c)."

[fol. 119] 46 M.C.C., at pp. 718-19:

"Susquehanna Transfer is located entirely on private property owned by applicant. It is reached only over a private road which is without sidewalks and on which are posted signs reading 'Private Property No Trespassing.' No tickets are sold to or from Susquehanna Transfer, and it is not intended that any passenger should either start or terminate their trips at such point, but rather that its use should be limited solely to the transfer of passengers from train to bus, or bus to train. There is no evidence of record that it has been, or will be, otherwise used by any passenger."

" . . . No passengers are transported by bus over the described route from or to Susquehanna Transfer other than those who have reached that point over applicant's rail line from some point west thereof, or who intend to travel by applicant's rail line to some such point."

.

46 M.C.C., at pp. 723-4:

"As stated, applicant has long served Manhattan from New Jersey points both in freight and passenger rail service. It maintains a passenger station at Chambers Street in Manhattan, and formerly maintained one at Twenty-third Street. By the time its trains reach Susquehanna Transfer they have picked up all of their Manhattan passengers, and the majority of the trains now begin or end their runs at that point. Susquehanna Transfer is due west of, and slightly closer to, midtown Manhattan than it is to the Jersey City ferry slip, and its use eliminates a needless 5-mile additional rail movement to Jersey City. Applicant's rail line into and out of Jersey City runs due north and south parallel to the river, and Susquehanna Transfer is geographically and physically more suitable as the motor transfer point than Jersey City would have been. It is reached by roads and streets leading direct to midtown Manhattan through the tunnel, and the necessary terminal facilities could be readily constructed there and the trains more easily started from east- to west-bound. The straight and [REDACTED] that point was favorable from a safety standpoint, and [REDACTED] use, which is limited to Manhattan passengers, reduces both the rail and bus mileage. . . . We conclude that at Susquehanna Transfer applicant has entered its terminal area at New York in respect of both freight and passenger traffic, and that the described motor service is an intraterminal operation."

This operation was also considered by Division 2 in *Commutation Fares, New York, S. & W. R. Co.*, 280 I.C.C. 31 (1951). The Division said (p. 34):

"The motor-coach service is maintained by the Public Service Interstate Corporation, a subsidiary of the Public Service Company of New Jersey, and the busses are operated under contract with the Susquehanna, by the terms of which the latter controls the number of busses and the running time so that the busses will meet the trains directly. They serve no other passengers except passengers to and

from Susquehanna Transfer. The Times Square terminal is likewise operated by the Public Service Interstate Corporation."

[fol. 120] In *Chicago v. Atchison, T. & S. F. R. Co.*, 357 U.S. 77 (1958), Chicago had enacted an ordinance providing that no license for a transfer vehicle, to transport passengers between railroad stations in Chicago, would issue unless the city commissioner first determined that public convenience and necessity required additional interterminal service. The Court invalidated the ordinance on the ground that Sections 1(4), 3(4) and 15(3) of the Interstate Commerce Act "precluded the City from exercising any veto power over such transfer service when performed by the railroads or by their chosen agents"—(p. 85). The Court said, per Black, J. (pp. 86-7, footnote omitted):

"As we understand these sections they not only authorize the railroads to take all reasonable and proper steps for the transfer of persons and property between their connecting lines, but impose affirmative obligations on them in this respect. . . . Here the railroads have furnished transfer facilities for the heavy flow of traffic between the numerous Chicago terminals for more than a century. It is agreed that transportation by motor vehicle is now the only practical means of moving this traffic from terminal to terminal. We think the transfer service involved is at least authorized, if not actually required, under the Act as a reasonable and proper facility for the interchange of passengers and their baggage between connecting lines.

"Moreover, §302(c) of the Act provides that motor vehicle transportation between terminals, whether performed by a railroad or by an agent or contractor of its choosing, shall be regarded as railroad transportation and shall be subject to the same comprehensive scheme of regulation which applies to such transportation. . . .

"The various provisions set forth above manifest a congressional policy to provide for the smooth, continuous and efficient flow of railroad traffic from State to State subject to federal regulation. In our view it would be inconsistent with this policy if local authorities retained the power to

decide whether the railroads or their agents could engage in the interterminal transfer of interstate passengers. We believe the Act authorizes the railroads to engage in this transfer operation themselves or to select such agents as they see fit for that purpose without leave from local authorities."

[fol. 121]

EXHIBIT NO. 3 TO STATEMENT

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY

Actual Out-Of-Pocket Passenger Losses, Total Freight Earnings and Percentages of the Latter to Absorb the Passenger losses.

Year	I.C.C. Formula	PASSENGER DEFICIT.			Percent of A to B.
		Out-of-Pocket Losses	Freight Earnings		
1959	\$629,981	\$269,767	\$185,045	Deficit	
1958	815,928	307,979	71,316	"	
1957	911,643	336,017	358,900		93.62
1956	869,970	243,976	482,627		50.55
1955	766,279	221,015	540,124		40.92
1954	918,284	247,299	776,919		31.83
1953	802,303	257,741	796,694		32.35

Auditor of Revenue & Disbursements
Paterson—New Jersey
December 27, 1960

[fol. 122]

EXHIBIT NO. 4 TO STATEMENT

Extracts from Report of Division 4 in Finance Docket No. 20266, *New York, Susquehanna & Western Railroad Company Abandonment of Operation, Jersey City, N. J.* (decided August 8, 1960), pp. 13-14

"The burden that continued operation of the trains in question would impose upon the carrier's interstate operations or upon interstate commerce must be balanced against the inconvenience or damage that abandonment of service would impose upon the communities affected. But that burden must also be considered in relationship to the financial status of the carrier, one of the essential factors considered in abandonment proceedings. Not only has Susquehanna's operation in the past been shown to have been at a loss but its continued operation in the future would severely tax the carrier. On the basis of the same evidence as was adduced in this proceeding, the State commission and the Appellate Division of the New Jersey Superior Court concluded . . . that the railroad did not have sufficient overall income safely to carry its passenger deficit, [and] that "extraordinary consideration" should be given to the financial aspects of its operations.' *Susquehanna etc., Assn. v. Bd. of Pub. Util. Comm'rs.*, 55 N. J. Super. 377, 151 A. 2d 9 (App. Div. 1959).

"The Susquehanna in May 1953 emerged from reorganization under section 77 of the Bankruptcy Act which had lasted for sixteen years. *In re New York, S. & W. Co. Reorganization*, 261 I.C.C. 101, 124. In 1956 its railroad operations failed to earn its reduced fixed charges by \$30,000; in 1957 by \$146,877, and in 1958 by \$531,694. As of June 30, 1958, it showed a working capital deficit of \$248,353. And, it has recently found it necessary to borrow \$300,000 on a government guaranteed loan to reimburse its treasury for expenditures made for additions and betterments. See Finance Docket No. 20840, *New York, S. & W. R. Co. Loan Guaranty*, decided December 23, 1959. The operation of the system as a whole, including both freight and passenger service, resulted in a loss of \$621,676

in net income after charges in 1958 and other substantial losses in previous years."

[fol. 123]

EXHIBIT NO. 5 TO STATEMENT

Extracts from opinion in *Susquehanna, etc., Assn. v. Bd. of Pub. Util. Comm'rs.*, 55 N. J. Super, 377, 151 A. 2d 9 (App. Div. 1959)

55 N. J. Super., at pp. 389-90, 151 A. 2d, at pp. 15-16:

"The Board was unquestionably aware that Susquehanna's present fixed charges apply to a drastically reduced capitalization approved by the Interstate Commerce Commission, the bankruptcy court, and the United States Court of Appeals as 'compatible with the public interest,' in a reorganization proceeding under section 77 of the Bankruptcy Act. This proceeding had lasted some 16 years, the railroad emerging in May 1953. See 11 U. S. C., §205(b) and (d); *In re New York, Susquehanna & Western R. Co.*, 103 F. Supp. 981 (D.C.D.N.J. 1951), affirmed on opinion 196 F. 2d 216 (3 Cir. 1952). The reorganization resulted, among other things, in reducing capitalization from \$42 millions to \$16 millions, and the recasting of first mortgage bonds and junior bonds. Fixed interest debt was reduced from \$12 million to \$5 million. The Interstate Commerce Commission had found that the reorganized company's earnings available for interest and other corporate purposes in a normal year might be expected to range between \$700,000 and \$775,000. The exhibits show that Susquehanna's actual earnings available for fixed charges during the four years following its reorganization steadily declined, so that the rate of return on the reduced capitalization fell from 3.38% in 1953 to 0.14% in 1957. The financial tables make clear that since the reorganization Susquehanna has not earned anything like what the Commission expected it to earn, largely as a result of its out-of-pocket losses in the passenger service."

55 N. J. Super., at pp. 401-3, 151 A. 2d, at pp. 22-3:

"We deal with the suggestion made on behalf of the Board by the Attorney General that 'it is easy to overstate the railroad's financial difficulties.' This lies in the face of the Board's specific finding, already mentioned, that Susquehanna 'does not have sufficient overall income to safely carry the deficit of the passenger service and that extraordinary consideration should be given to the financial aspects of its operation.'

"The Attorney General states that 'No company is entitled to a guaranteed rate of return.' However that may be, Susquehanna has since its reorganization earned only between 0.14% (in 1957) and 3.38% (in 1953 when it emerged from reorganization) on the greatly reduced capitalization which the Interstate Commerce Commission and the United States Court of Appeals found to be compatible with the public interest. This should be contrasted with rates of return well over 5% which the Board found to be within the range of reasonableness for electric and telephone companies, which findings were approved by the Supreme Court. See *In re N. J. Power & Light Co.*, 15 N. J. 498, 534 (1952); *In re N. J. Power & Light Co.*, 15 N. J. 82, 85 (1954); *N. J. Bell Tel. Co. v. Board of Public Utility Comm'rs*, 12 N. J. 568, 600-601 (1953). As Susquehanna points out, these industries have earnings more stable than [fol. 124] in the case of railroads. Susquehanna's return on capitalization is not such as, in the language of *Public Service Coordinated Transport v. State*, 5 N. J. 196, 225 (1950) 'should be sufficient to encourage good management and furnish a reward for efficiency, to enable the utility, under efficient and economical operation, to maintain and support its credit; and to enable it to raise money necessary for the proper discharge of its public duties.'

"We have heretofore discussed certain aspects of Susquehanna's finances. Examination of the financial tables shows that continuing out-of-pocket losses from passenger service have had to be taken up by freight earnings. These earnings have precipitously declined since 1950 (from \$1,148,764 to \$358,900), in large part because of the loss of

freight business when the Ford Motor Company moved from Edgewater to Mahwah, N. J. As a result, the percentage of freight earnings required to absorb the out-of-pocket passenger losses has, as noted above, increased—from 32% in 1952 through 1954, to 41% in 1955, 51% in 1956 and 94% in 1957 (round figures). The 'lucrative freight business' which was present in *Pennsylvania R. R. Co. v. Board of Public Utility Comm'rs.*, above, 48 N. J. Super., at page 226, just does not exist here to offset passenger revenue losses.

"The Board was entirely correct in taking into consideration the financial figures relating to the Susquehanna operation. As noted in our discussion under III above, the Board could not, in its concern for local users, ignore the interest of the general public in the continued operation of the railroad, or shut its eyes to the fact that continuing passenger service deficits might jeopardize the entire operation. See *In re Central R. R. Co. of N. J.*, above, 41 N. J. Super., at pages 501-502, and the dissenting opinion in *In re New Jersey & New York R. R. Co.*, above, 12 N. J., at pages 290-291."

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY

INCOME STATEMENT FOR THE CALENDAR YEARS 1958, 1959 AND NINE MONTHS OF 1960.

	1958	1959	9 Months 1960
OPERATING REVENUES:			
Freight	\$3,778,014	\$3,648,778	\$2,755,632
Passenger	308,772	200,096	116,889
All Other	182,783	105,511	247,137
Total	\$4,269,569	\$3,954,385	\$3,119,658
OPERATING EXPENSES:			
Maintenance of Way & Structures	\$ 174,417	\$ 165,128	\$ 378,096
Maintenance of Equipment	653,624	613,841	490,221
Traffic	77,672	204,697	61,702
Transportation	2,172,421	2,049,993	1,372,115
General	142,413	221,722	221,258
Total	\$3,120,547	\$3,055,381	\$2,523,392
Net Revenue From Railway Operations	\$ 1,149,022	\$ 898,999	\$ 596,266
Railway Tax Accruals	368,021	393,899	312,388
Railway Operating Income	78,290	9,121	183,878
Equipment Funds - Net Debit	480,857	507,352	367,490
Joint Facility Funds - Net Credit	11,562	12,113	11,278
Net Railway Operating Income	\$ 470,709	\$ 418,483	\$ 274,064
OTHER INCOME:			
Income from Lease of Road & Equipment	\$ 5,110	\$ 5,126	\$ 1,261
Miscellaneous Rent Income	26,860	26,731	23,393
Income from Non-operating Property	1,829	3,388	4,466
Interest Income	2,385	2,185	1,990
Miscellaneous Income	8,013	2,432	253
Total Other Income	\$ 34,197	\$ 39,862	\$ 11,363
TOTAL INCOME	\$ 504,906	\$ 458,345	\$ 285,427
MISCELLANEOUS DEDUCTIONS FROM INCOME:			
Miscellaneous Taxes	\$ 141	\$ 25	\$ 25
Miscellaneous Tax Accruals	4,215	4,357	3,375
Miscellaneous Taxes Charged	1,657	1,123	1,006
Total Miscellaneous Deductions	\$ 5,913	\$ 5,705	\$ 4,606
Income Available for Fixed Charge	\$ 498,993	\$ 452,640	\$ 280,821

OPERATING EXPENSES:

Maintenance of Way & Structures
Maintenance of Equipment
Traffic
Transportation
General
Total

Net Revenue From Railway Operations
Railway Tax Accruals

Railway Operating Income
Equipment Rents - Net Debit
Joint Facility Rents - Net Credit

Net Railway Operating Income

OTHER INCOME:

Income from Lease of Road & Equipment
Miscellaneous Rent Income
Income from Non-operating Property
Interest Income
Miscellaneous Income
Total Other Income

TOTAL INCOME

MISCELLANEOUS DEDUCTIONS FROM INCOME:

Miscellaneous Rents
Miscellaneous Tax Accruals
Miscellaneous Income Charges
Total Miscellaneous Deductions

Income Available for Fixed Charges

FIXED CHARGES:

Rent for Leased Roads & Equipment
Interest on Funded Debt:
(a) Fixed charges not in default
(b) Interest in default
Amortization of discount on Funded Debt
Total Fixed Charges
Income after Fixed Charges

OTHER DEDUCTIONS:

Interest on Funded Debt:
(c) Contingent Interest

Net Income After Fixed Charges & Other Deductions

Denotes RED figure

Accounting Department
Paterson - New Jersey
November 15, 1960

\$ 174,617	\$ 165,121	\$ 370,096
653,654	643,841	150,221
77,672	104,677	61,702
2,172,621	2,069,993	1,372,115
130,613	31,722	27,984
<u>13,709,237</u>	<u>13,805,304</u>	<u>12,505,058</u>
\$ 144,311	\$ 102,900	\$ 153,521
368,021	393,899	302,388
76,290	9,121	151,193
180,857	507,352	307,190
<u>11,5424</u>	<u>12,113</u>	<u>11,278</u>
\$ 116,1294	\$ 105,8184	\$ 225,0194
\$ 5,110	\$ 5,126	\$ 1,262
26,549	26,731	23,393
1,829	3,326	1,168
2,385	1,185	1,990
8,913	2,139	953
<u>11,706</u>	<u>38,809</u>	<u>1,853</u>
\$ 371,3134	\$ 147,0094	\$ 190,3664
\$ 111	\$ 25	\$ 25
1,115	1,357	3,375
<u>1,657</u>	<u>1,121</u>	<u>1,006</u>
\$ 7,952	\$ 7,000	\$ 10,206
\$ 379,2954	\$ 151,8124	\$ 200,7724
\$ 165	\$ 370	\$ 959
151,934	133,172	103,615
-	-	-
<u>132,399</u>	<u>131,522</u>	<u>114,574</u>
\$ 531,6944	\$ 508,3544	\$ 305,3464
\$ 89,982	-	-
\$ 621,6764	\$ 508,3544	\$ 305,3464

[fol. 125]

EXHIBIT NO. 6 TO STATEMENT

N.J., 7:40 AM, for Period October 17th to October
21st, and October 24th to October 28th, Inclusive, 1960.

From	To	October										Total Passengers	Average Per Day
		17	18	19	20	21	24	25	26	27	28		
Butler	Susq. Tfr.	0	0	0	0	0	0	0	0	0	0	0	0
Pompton Lakes		0	0	0	0	0	0	0	0	0	0	0	0
Oakland		2	2	2	2	1	1	1	2	1	2	16	1.6
Crystal Lake		1	1	1	1	1	1	1	1	1	1	10	1.0
Campgaw		1	1	1	1	1	1	1	1	1	1	10	1.0
Wyckoff		1	1	1	1	1	0	0	0	0	0	5	.5
Wortendyke		0	0	1	1	0	0	0	0	0	0	2	.2
Midland Park		2	0	0	0	0	0	0	0	0	0	2	.2
No. Hawthorne		0	0	0	0	0	1	1	0	1	1	4	.4
Hawthorne		6	3	5	6	3	2	4	2	5	3	39	3.9
Riverside		0	0	0	0	0	0	0	0	0	0	0	0
Paterson B'way		9	12	8	9	8	10	9	8	11	10	94	9.4
Vreeland Ave.		5	3	2	3	4	4	4	3	4	2	34	3.4
East Paterson		3	2	2	2	3	3	2	3	2	3	25	2.5
Passaic Jct.		0	0	0	0	0	0	0	0	0	0	0	0
Rochelle Park		7	6	5	6	8	6	6	6	4	5	59	5.9
Maywood		8	6	6	9	7	7	5	7	7	7	69	6.9
Prospect Ave.		0	0	1	1	0	0	0	0	0	0	2	.2
Hackensack		1	1	3	0	0	1	1	1	0	0	8	.8
Bogota		1	1	1	1	1	1	1	1	1	1	10	1.0
Ridgefield Pk		0	1	1	1	1	0	1	1	1	1	8	.8
Little Ferry		0	0	0	0	0	0	0	0	0	0	0	0
Babbitt		0	0	0	0	0	0	0	0	0	0	0	0
No. Bergen		0	0	0	0	0	0	0	0	0	0	0	0
Total		47	40	40	44	39	38	37	36	39	37	397	39.7
Paterson, N.J. and East		34	32	29	32	32	32	29	30	30	29	309	30.9
Hawthorne and No. Hawthorne, N.J.		6	3	5	6	3	3	5	2	6	4	43	4.3
Midland Park, N.J. and West		7	5	6	6	4	3	3	4	3	4	45	4.5
Intrastate Passengers		6	7	8	11	11	7	7	8	7	8	80	8.0
Total All Passengers		53	47	48	55	50	45	44	44	46	45	477	47.7

Daily except Saturday, Sunday and Holidays

Office of Revenue & Disbursements
Paterson - New Jersey
Dec. 5, 1960

[Vol. 132]

EXHIBIT NO. 13A TO STATEMENT

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[fol. 126]

EXHIBIT NO. 8 TO STATEMENT

Extracts from Report of Division 4 in Finance Docket No. 20266, *New York, Susquehanna & Western Railroad Company Abandonment of Operation, Jersey City, N. J.* (decided August 8, 1960), pp. 11-12

"Erie contends that the \$30,000 annual rental is grossly inadequate and such payments are being treated as payments on account. Under such circumstances any rental determined by this Commission to be just and reasonable compensation would be retroactive to December 15, 1958, when Susquehanna commenced its 'on account' rental payments. While Susquehanna no longer has use of the Erie ferry, which it had at the time it paid rental of \$100,000 annually, it does not necessarily follow that a rental now approved by us would be less than that amount. If we take into account \$100,000 as the expense of operating the line we arrive at a *loss*, based on the examiner's computations, of \$38,000. And if the computation is made on the assumption that we would approve the \$197,000 requested by Erie we reach an operational *loss* of \$135,000 (italics in original).

"Erie has divided the trackage and terminal section, from milepost 0.00 to milepost 2.61, into five zones. Zone 1, from milepost 0.00 to 0.59, embracing the terminal facilities, is used exclusively by Susquehanna. Zones 2 through 5, from milepost 0.59 to milepost 2.61, inclusive, are used jointly by Erie and Susquehanna, with the percentage of use by the latter ranging from 5.80 to 15.79 percent.

"With respect to Zone 1, Erie apportions 100 percent of use, or the entire cost of operation to Susquehanna. The valuation figures used in the formula were prepared by Erie in accordance with the rules, methods and principles established by the Commission's Bureau of Valuation.

"The depreciated value of the property in Zone 1 is \$1,144,717. A 6-percent return of investment thereon would be \$68,863. Adding real estate taxes for the year 1958 of \$18,347, annual depreciation of \$8,615, and annual mainte-

nance expense of \$26,303, a rental of \$122,128 results for the terminal facilities alone. This allows nothing to Erie for its cost of operating the zone nor for Susquehanna's percentage use of the other zones. Using the examiner's computations and applying the amount of \$122,128 as expense assigned to the line, Susquehanna shows a *loss* of \$59,681 from its operation in Zone 1, alone.

"If we allow nothing to Erie for return of investment and on a user basis apportion to Susquehanna real estate taxes \$20,358, depreciation expense \$10,228, maintenance expense \$30,142, and cost of operation \$31,552, a total expense of \$92,250 would be assigned and result in an operating loss of \$29,803 in the zone."

[fol. 127]

EXHIBIT NO. 9 TO STATEMENT

NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY

Statement of Revenues and Selected Items of Expense in Connection
with the Operation of Trains 908 and 919, 910 and 923 and 916 and
929 for Year 1960 based on Present Operation.

(A)—*Expenses:*

	Trains 908 & 919	Trains 910 & 923	Trains 916 & 929	Total
Wages (Train & Engine Crews)	\$33,473	\$33,666	\$33,276	\$100,415
Vacation Allowance	1,931	1,943	1,920	5,794
Payroll Taxes	2,016	2,016	2,016	6,048
Repairs to Locomotives	12,158	12,158	12,158	36,474
Repairs to Passenger Cars	1,022	1,022	1,022	3,066
Fuel for Locomotives	2,177	2,177	2,177	6,531
Train Supplies and Expenses	2,092	2,092	2,092	6,276
Depreciation—Loco- motives & Cars	5,886	5,886	5,886	17,658
	\$60,755	\$60,960	\$60,547	\$182,262

(B)—*Revenues:* \$12,578 \$33,059 \$19,411 \$ 65,048

(C)—*Loss:* \$48,177 \$27,901 \$41,136 \$117,214

Note: Expenses are based on actual present expense computed
in manner set forth in Ex. 14.

Revenues are based on actual revenue collected in two
five day periods commencing respectively on October
17th and October 24th, projected to annual basis.

Office of Revenue & Disbursements
Paterson—New Jersey
December 27, 1960

N.J. 1:50 PM, for period October 17th to October
21st, and October 24th to October 28th, inclusive, 1960.

From	To	OCTOBER										Total Passengers	Average Per Day
		17	18	19	20	21	24	25	26	27	28		
Butler	Susq. Tfr.	0	0	0	0	0	0	0	0	0	0	0	0
Pompton Lakes		0	0	0	0	0	0	0	0	0	0	0	0
Oakland		7	4	4	6	4	6	7	6	6	4	54	5.4
Crystal Lake		0	0	0	0	0	0	0	0	0	0	0	0
Campgaw		0	0	0	0	0	0	0	0	0	0	0	0
Wyckoff		16	14	16	15	14	15	15	15	16	14	150	15.0
Wortendyke		3	3	2	3	2	4	4	3	5	4	33	3.3
Midland Park		8	7	3	8	6	6	5	4	5	5	57	5.7
No. Hawthorne		5	9	11	5	5	7	8	8	5	6	69	6.9
Hawthorne		20	24	18	20	14	24	21	23	21	20	205	20.5
Riverside		0	0	0	0	0	0	0	0	0	0	0	0
Paterson B'way		21	25	21	26	25	22	24	22	24	15	225	22.5
Vreeland Ave.		15	15	14	11	10	17	15	12	12	13	134	13.4
East Paterson		0	0	0	0	0	0	0	0	0	0	0	0
Passaic Jct.		0	0	0	0	0	0	0	0	0	0	0	0
Rochelle Park		17	12	11	14	13	11	11	9	14	12	124	12.4
Maywood		18	14	15	21	17	9	12	13	13	12	144	14.4
Prospect Avenue		0	0	0	0	0	0	0	0	0	0	0	0
Hackensack		1	0	0	1	1	0	2	0	1	0	6	.6
Bogota		0	0	0	0	0	0	0	0	0	0	0	0
Ridgefield Park		0	0	0	0	0	0	0	0	0	0	0	0
Little Ferry		0	0	0	0	0	0	0	0	0	0	0	0
Babbitt		0	0	0	0	0	0	0	0	0	0	0	0
North Bergen		0	0	0	0	0	0	0	0	0	0	0	0
Total		131	127	115	111	111	121	124	122	122	122	1,201	120.1
					130				115	105			
Paterson, N.J. and East		72	66	61	73	66	59	64	56	64	52	633	63.3
Hawthorne & No.		25	33	29	25	19	31	29	31	26	26	274	27.4
Hawthorne, N.J. & West		34	28	25	32	26	31	31	28	32	27	294	29.4
Intrastate Passengers		4	5	7	7	6	8	6	5	10	5	63	6.3
Total All Passengers		135	132	122	137	117	129	120	110	110	110	1,264	126.4
							130		132				

Daily except Saturday, Sunday and Holidays

Office of Revenue and Disbursements
Paterson - New Jersey
Dec. 5, 1960

EXHIBIT NO. 13B TO STATEMENT

133

Other Common Carrier Bus Service Available at Oakland,
Franklin Lakes and Wyckoff

Eastbound

<u>Lv.</u>	<u>No. of Pass.</u>	<u>908</u>	<u>Hudson</u>	<u>No. of Pass.</u>	<u>910</u>	<u>Hudson</u>	<u>No. of Pass.</u>	<u>916</u>	<u>Hudson</u>
Oakland	1.6	6:37am	7:00am	5.4	7:01am	7:15am	2.4	7:25am	7:30am
Crystal Lake	1.0	6:40	7:03	0	--	7:18	0	7:25	7:33
Campgaw	1.0	6:43	7:05	0	7:07	7:20	3.8	7:31	7:35
Wyckoff	.5	6:46	7:11	15.0	7:10	7:26	8.8	7:34	7:41
Arr. PABT		8:00	8:05		8:16	8:20		8:43	8:35

Westbound

<u>Lv.</u>	<u>No. of Pass.</u>	<u>919</u>	<u>Hudson</u>	<u>No. of Pass.</u>	<u>923</u>	<u>Hudson</u>	<u>No. of Pass.</u>	<u>929</u>	<u>Hudson</u>
PABT		4:50pm	5:00pm		5:17pm	5:15pm		5:30pm	5:30pm
Arr. Wyckoff	2.6	6:01	5:52	19.2	6:22	6:07	1.5	6:41	6:21
Campgaw	1.6	6:05	5:56	1.2	6:26	6:11	.6	6:45	6:25
Crystal Lake	0	6:07	6:00	0	--	6:15	.9	6:47	6:29
Oakland	2.3	6:10	6:05	4.6	6:31	6:20	1.3	6:50	6:37

Other Common Carrier Bus Service Available at
Wortendyke and Midland Park

Eastbound

<u>LY.</u>	<u>No. of Pass.</u>	<u>908</u>	<u>Inter- City</u>	<u>No. of Pass.</u>	<u>910</u>	<u>Inter- City</u>	<u>No. of Pass.</u>	<u>916</u>	<u>Inter- City</u>
Wortendyke	.2	6:49am	6:50am	3.3	7:13am	7:10am	1.2	7:37am	7:35am
Midland Park	.2	6:52	6:55	5.7	7:16	7:15	3.6	7:40	7:40
ARR. PABT		8:00	7:50		8:16	8:10		8:43	8:35

Westbound

<u>LY.</u>	<u>No. of Pass.</u>	<u>919</u>	<u>Inter- City</u>	<u>No. of Pass.</u>	<u>923</u>	<u>Inter- City</u>	<u>No. of Pass.</u>	<u>929</u>	<u>Inter- City</u>
PABT.		4:50pm	5:00pm		5:17pm	5:20pm		5:30pm	5:35pm
ARR.									
Midland Park	.7	5:55	5:52	4.8	6:16	6:09	1.5	6:35	6:24
Wortendyke	1.6	5:58	5:57	2.7	6:19	6:14	.3	6:38	6:29

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EXHIBIT No. 11C TO STATEMENT

Other Common Carrier Service Available at Hawthorne,
Paterson and East Paterson

Eastbound

<u>Lv.</u>	<u>No. of Pass.</u>	<u>908 am</u>	<u>Man- hattan am</u>	<u>Erie am</u>	<u>No. of Pass.</u>	<u>910 am</u>	<u>Man- hattan am</u>	<u>Erie am</u>	<u>No. of Pass.</u>	<u>916 am</u>	<u>Man- hattan am</u>	<u>Erie am</u>	<u>Erie am</u>
Hawthorne				7:06				7:23					8:06
N. Hawthorne	.4	6:56			6.9	7:20			6.5	7:44			
Hawthorne	3.9	6:58			20.5	7:23			10.7	7:46			
Paterson				7:12				7:28				8:00	8:12
Broadway	9.4	7:04	7:20		22.5	7:29	7:29		4.1	7:51	7:54		
Vreeland Av.	3.4	7:07	7:25		13.4	7:32	7:33		12.2	7:54	7:58		
E. Paterson	2.5	7:09	7:30		0	--	7:37		3.4	7:56	8:02		
Acc. PABT		8:00	8:00			8:16	8:07			8:43	8:37		
Barclay St.				8:04				8:16				8:48	9:04

Westbound

<u>Lv.</u>	<u>No. of Pass.</u>	<u>919 pm</u>	<u>Man- hattan pm</u>	<u>Erie pm</u>	<u>No. of Pass.</u>	<u>923 pm</u>	<u>Man- hattan pm</u>	<u>Inter- City pm</u>	<u>Erie pm</u>	<u>No. of Pass.</u>	<u>929 pm</u>	<u>Man- hattan pm</u>	<u>Erie pm</u>
PABT		4:50	4:50			5:17	5:10	5:15			5:30	5:30	
Barclay St.				4:58					5:25				5:25
Acc. E. Paterson	0	5:37	5:28		0	--	--	--		.8	6:17	6:18	
Paterson				5:44					6:15				6:15
Vreeland Av.	4.0	5:39	5:32		9.0	6:01	6:02			3.7	6:19	6:22	
Broadway	2.4	5:42	5:36		15.8	6:04	6:06	6:00		6.6	6:22	6:26	
Hawthorne				5:50					6:20				6:20
Hawthorne	5.7	5:48			21.8	6:09				3.5	6:28		
N. Hawthorne	1.5	5:51			8.8	6:12				1.6	6:30		

21st, and October 24th to October 28th inclusive, 1960.

From	To	OCTOBER										Total Psgs	Average Psgs Per Day
		17	18	19	20	21	24	25	26	27	28		
Butler	Susq. Tfr.	0	0	0	0	0	0	0	0	0	0	0	0
Pompton Lakes		0	0	0	0	0	0	0	0	0	0	0	0
Oakland		2	1	2	2	1	1	3	2	4	6	24	2.4
Crystal Lake		0	0	0	0	0	0	0	0	0	0	0	0
Campgaw		3	6	4	4	4	4	4	3	4	2	38	3.8
Wyckoff		9	9	8	6	10	7	9	10	8	12	88	8.8
Wortendyke		1	1	1	1	0	2	2	1	2	1	12	1.2
Midland Park		2	3	3	1	2	4	5	9	4	3	36	3.6
No. Hawthorne		6	5	6	8	9	8	5	6	6	6	65	6.5
Hawthorne		11	12	10	11	12	9	12	9	10	11	107	10.7
Riverside		0	0	0	0	0	0	0	0	0	0	0	0
Paterson B'way		4	2	2	5	3	4	4	6	4	7	41	4.1
Vreeland Avenue		10	12	14	11	14	12	13	14	11	11	122	12.2
East Paterson		4	4	4	3	3	3	2	3	4	4	34	3.4
Passaic Jct.		0	0	0	0	0	0	0	0	0	0	0	0
Rochelle Park		12	15	16	14	13	9	13	15	12	13	132	13.2
Maywood		16	16	16	13	15	16	13	12	14	11	142	14.2
Prospect Avenue		3	3	3	1	2	3	1	1	0	3	20	2.0
Hackensack		3	3	3	3	2	3	3	1	2	4	27	2.7
Bogota		1	2	5	2	2	1	2	2	2	0	19	1.9
Ridgefield Park		0	1	0	1	0	0	0	0	0	0	2	.2
Little Ferry		2	0	0	0	1	0	0	0	0	0	3	.3
Babbitt		0	0	0	0	0	0	0	0	0	0	0	0
North Bergen		0	0	0	0	0	0	0	0	0	0	0	0
Total		89	95	97	86	93	86	91	94	87	94	912	91.2
Paterson, N.J. and East		55	58	63	53	55	51	51	54	49	53	542	54.2
Hawthorne and No. Hawthorne, N.J.		17	17	16	19	21	17	17	15	16	17	172	17.2
Midland Park and West		17	20	18	14	17	18	23	25	22	24	198	19.8
Intrastate Passengers		21	17	20	23	22	22	27	22	18	21	213	21.3
Total All Passengers		110	117	115	109	115	108	116	115	105	115	1,125	112.5

Daily except Saturday, Sunday and Holidays

Office of Revenue and Disbursements
Paterson - New Jersey
Dec. 5, 1960

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EXHIBIT No. 130 TO STATEMENT

134

Other Common Carrier Service Available at
Rockelle Rock and Maywood

East-bound

<u>Ly.</u>	<u>No. of Pass.</u>	<u>908 am</u>	<u>West- Wood am</u>	<u>Inter- City am</u>	<u>No. of Pass.</u>	<u>910 am</u>	<u>West- Wood am</u>	<u>Inter- City am</u>	<u>No. of Pass.</u>	<u>916 am</u>	<u>West- Wood am</u>	<u>Inter- City am</u>
Rockelle Pk.	5.9	7:14	7:15	7:19	12.8	7:38	7:30	7:37	13.2	8:01	7:50	8:04
Maywood	6.9	7:17	7:20	7:22	14.4	7:41	7:35	7:40	14.2	8:04	7:55	8:07
ACT. PABT		8:00	8:01	8:07		8:16	8:16	8:25		8:43	8:36	8:52

Westbound

<u>Ly.</u>	<u>No. of Pass.</u>	<u>919 pm</u>	<u>Inter- City pm</u>	<u>No. of Pass.</u>	<u>923 pm</u>	<u>West- Wood pm</u>	<u>No. of Pass.</u>	<u>929 pm</u>	<u>Inter- City pm</u>
PABT		4:50	5:05		5:17	5:10		5:30	5:25
ACT.									
Maywood	3.4	5:30	5:45	16.0	5:52	5:53	5.0	6:10	6:10
Rockelle Pk.	4.3	5:32	5:48	14.7	5:55	5:58	5.2	6:12	6:13

NEWYORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY

Statement Showing the Total Number of Revenue Passengers "On and Off", and the Average Per Day Using Train No.908, Departing Butler, N.J., 6:26 AM, Arriving Susquehanna Transfer, N.J., 7:40 AM, for Period October 17th to October 21st, and October 24th to October 28th, Inclusive, 1960.

From	To	October										Total Passengers	Average Per Day
		17	18	19	20	21	24	25	26	27	28		
Butler	Susq. Tfr.	0	0	0	0	0	0	0	0	0	0	0	0
Pompton Lakes		0	0	0	0	0	0	0	0	0	0	0	0
Oakland		2	2	2	2	1	1	1	2	1	2	16	1.6
Crystal Lake		1	1	1	1	1	1	1	1	1	1	10	1.0
Campgaw		1	1	1	1	1	1	1	1	1	1	10	1.0
Wyckoff		1	1	1	1	1	0	0	0	0	0	5	.5
Wortendyke		0	0	1	1	0	0	0	0	0	0	2	.2
Midland Park		2	0	0	0	0	0	0	0	0	0	2	.2
No. Hawthorne		0	0	0	0	0	1	1	0	1	1	4	.4
Hawthorne		6	3	5	6	3	2	4	2	5	3	39	3.9
Riverside		0	0	0	0	0	0	0	0	0	0	0	0
Paterson B'way		9	12	8	9	8	10	9	8	11	10	94	9.4
Vreeland Ave.		5	3	2	3	4	4	4	3	4	2	34	3.4
East Paterson		3	2	2	2	3	3	2	3	2	3	25	2.5
Passaic Jct...		0	0	0	0	0	0	0	0	0	0	0	0
Rochelle Park		7	6	5	6	8	6	6	6	4	5	59	5.9
Maywood		8	6	6	9	7	7	5	7	7	7	69	6.9
Prospect Ave.		0	0	1	1	0	0	0	0	0	0	2	.2
Hackensack		1	1	3	0	0	1	1	1	0	0	8	.8
Bogota		1	1	1	1	1	1	1	1	1	1	10	1.0
Ridgefield Pk		0	1	1	1	1	0	1	1	1	1	8	.8
Little Ferry		0	0	0	0	0	0	0	0	0	0	0	0
Babbitt		0	0	0	0	0	0	0	0	0	0	0	0
No. Bergen		0	0	0	0	0	0	0	0	0	0	0	0
Total		47	40	40	44	39	38	37	36	39	37	397	39.7

Paterson, N.J.
and East
Hawthorne and
No. Hawthorne, N.J.
Midland Park, N.J.
and West
Intrastate
Passengers

34	32	29	32	32	32	29	30	30	29
6	3	5	6	3	3	5	2	6	4
7	5	6	6	4	3	3	4	3	4
6	7	8	11	11	7	7	8	7	8

309
43
45
80

30.9
4.3
4.5
8.0

Exhibit No.

Vol. 1321

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

Statement Showing the Total Number of Revenue Passengers "On and Off", and the Average Per Day Using Train 910, Departing Butler, N.J. 6:48 AM, Arriving Susquehanna Transfer, N.J. 7:56 PM, for Period October 17th to October 21st, and October 24th to October 28th, inclusive, 1960.

From	To	OCTOBER										Total Passengers	Average Per Day
		17	18	19	20	21	24	25	26	27	28		
Butler	Susq. Tfr.	0	0	0	0	0	0	0	0	0	0	0	0
Pompton Lakes		0	0	0	0	0	0	0	0	0	0	0	0
Oakland		7	4	4	6	4	6	7	6	6	4	54	5.4
Crystal Lake		0	0	0	0	0	0	0	0	0	0	0	0
Campgaw		0	0	0	0	0	0	0	0	0	0	0	0
Wyckoff		16	14	16	15	14	15	15	15	16	14	150	15.0
Wortendyke		3	3	2	3	2	4	4	3	5	4	33	3.3
Midland Park		8	7	3	8	6	6	5	4	5	5	57	5.7
No. Hawthorne		5	9	11	5	5	7	8	8	5	6	69	6.9
Hawthorne		20	24	18	20	14	24	21	23	21	20	205	20.5
Riverside		0	0	0	0	0	0	0	0	0	0	0	0
Paterson B'way		21	25	21	26	25	22	24	22	24	15	225	22.5
Vreeland Ave.		15	15	14	11	10	17	15	12	12	13	134	13.4
East Paterson		0	0	0	0	0	0	0	0	0	0	0	0
Passaic Jct.		0	0	0	0	0	0	0	0	0	0	0	0
Rochelle Park		17	12	11	14	13	11	11	9	14	12	124	12.4
Maywood		18	14	15	21	17	9	12	13	13	12	144	14.4
Prospect Avenue		0	0	0	0	0	0	0	0	0	0	0	0
Hackensack		1	0	0	1	1	0	2	0	1	0	6	.6
Bogota		0	0	0	0	0	0	0	0	0	0	0	0
Ridgefield Park		0	0	0	0	0	0	0	0	0	0	0	0
Little Ferry		0	0	0	0	0	0	0	0	0	0	0	0
Babbitt		0	0	0	0	0	0	0	0	0	0	0	0
North Bergen		0	0	0	0	0	0	0	0	0	0	0	0
Total		131	127	115	111	111	121	124	115	122	105	1,201	120.1
Paterson, N.J. and East Hawthorne & No. Hawthorne, N.J. Midland Park, N.J. & West Intrastate Passengers		72	66	61	73	66	59	64	56	64	52	633	63.3
		25	33	29	25	19	31	29	31	26	26	274	27.4
		34	28	25	32	26	31	31	28	32	27	294	29.4
		4	5	7	7	6	8	6	5	10	5	63	6.3

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD CO.

Statement Showing the Total Number of Revenue Passengers "On and Off", and the Average Per Day Using Train 916, Departing Butler, N.J. 7:14 AM, Arriving Susquehanna Transfer, N.J. 8:23 AM, for Period October 17th to October 21st, and October 24th to October 28th inclusive, 1960.

From	To	OCTOBER										Total Psgs	Average Psgrs Per Day
		17	18	19	20	21	24	25	26	27	28		
Butler	Susq. Tfr.	0	0	0	0	0	0	0	0	0	0	0	0
Pompton Lakes		0	0	0	0	0	0	0	0	0	0	0	0
Oakland		2	1	2	2	1	1	3	2	4	6	24	2.4
Crystal Lake		0	0	0	0	0	0	0	0	0	0	0	0
Campgaw		3	6	4	4	4	4	4	3	4	2	38	3.8
Wyckoff		9	9	8	6	10	7	9	10	8	12	88	8.8
Wortendyke		1	1	1	1	0	2	2	1	2	1	12	1.2
Midland Park		2	3	3	1	2	4	5	9	4	3	36	3.6
No. Hawthorne		6	5	6	8	9	8	5	6	6	6	65	6.5
Hawthorne		11	12	10	11	12	9	12	9	10	11	107	10.7
Riverside		0	0	0	0	0	0	0	0	0	0	0	0
Paterson B'way		4	2	2	5	3	4	4	6	4	7	41	4.1
Vreeland Avenue		10	12	14	11	14	12	13	14	11	11	122	12.2
East Paterson		4	4	4	3	3	3	2	3	4	4	34	3.4
Passaic Jct.		0	0	0	0	0	0	0	0	0	0	0	0
Rochelle Park		12	15	16	14	13	9	13	15	12	13	132	13.2
Maywood		16	16	16	13	15	16	13	12	14	11	142	14.2
Prospect Avenue		3	3	3	1	2	3	1	1	0	3	20	2.0
Hackensack		3	3	3	3	2	3	3	1	2	4	27	2.7
Bogota		1	2	5	2	2	1	2	2	2	0	19	1.9
Ridgefield Park		0	1	0	1	0	0	0	0	0	0	2	.2
Little Ferry		2	0	0	0	1	0	0	0	0	0	3	.3
Sabbitt		0	0	0	0	0	0	0	0	0	0	0	0
North Bergen		0	0	0	0	0	0	0	0	0	0	0	0
Total		89	95	97	86	93	86	91	94	87	94	912	91.2
Paterson, N.J. and East		55	58	63	53	55	51	51	54	49	53	542	54.2
Hawthorne and No. Hawthorne, N.J.		17	17	16	19	21	17	17	15	16	17	172	17.2
Midland Park and West		17	20	18	14	17	18	23	25	22	24	198	19.8

[fol. 134]

EXHIBIT No.

Susquehanna Transfer, N.J. 5:10 PM Arriving Butler, N.J.
6:22 PM, for Period October 17th to October 21st, and
October 24th to October 28th inclusive, 1960.

From	To	OCTOBER										Total Pgtrs	Average Pgtrs Per Day
		17	18	19	20	21	24	25	26	27	28		
Susquehanna Tfr.	No. Bergen	0	0	0	0	0	0	0	0	0	0	0	0
	Babbitt	0	0	0	0	0	0	0	0	0	0	0	0
	Little Ferry	0	0	0	0	0	0	0	0	0	0	0	0
	Ridgefield Park	0	0	0	0	0	0	0	0	0	0	0	0
	Bogota	0	0	0	0	0	0	0	0	0	1	0	.1
	Hackensack	1	2	1	1	1	1	1	1	1	1	11	1.1
	Prospect Avenue	0	0	1	0	1	0	0	0	0	0	2	.2
	Maywood	2	4	5	4	4	4	4	1	3	3	34	3.4
	Rochelle Park	4	5	4	5	3	4	3	5	6	4	43	4.3
	Passaic Jct.	0	0	0	0	0	0	0	0	0	0	0	0
	East Paterson	0	0	0	0	0	0	0	0	0	0	0	0
	Vreeland Avenue	4	3	5	4	2	5	5	3	6	3	40	4.0
	Paterson B'way	3	3	1	3	4	0	1	3	3	3	24	2.4
	Riverside	0	0	0	0	0	0	0	0	0	0	0	0
	Hawthorne	6	6	6	6	3	6	7	4	7	6	57	5.7
	No. Hawthorne	2	1	2	2	0	2	2	1	2	1	15	1.5
	Midland Park	1	1	0	0	0	3	0	1	0	1	7	.7
	Wortendyke	2	1	2	1	1	3	2	1	2	1	16	1.6
	Wyckoff	4	3	3	3	3	2	2	2	2	2	26	2.6
	Campgaw	1	1	2	1	2	3	3	0	1	2	16	1.6
	Crystal Lake	0	0	0	0	0	0	0	0	0	0	0	0
	Oakland	3	1	2	5	2	2	2	2	2	2	23	2.3
	Pompton Lakes	0	0	0	0	0	0	0	0	0	0	0	0
	Butler	0	0	0	0	0	0	0	0	0	0	0	0
	Total	33	31	34	35	26	35	32	24	35	30	315	31.5
	Paterson N.J. and East	14	17	17	17	15	14	11	13	19	15	155	15.5
	Hawthorne and No. Hawthorne, N.J.	8	7	8	8	3	8	9	5	9	7	72	7.2
	Midland Park, N.J. and West	11	7	9	10	8	13	9	6	7	8	88	8.8
	Intrastate Passengers	10	18	16	11	23	17	20	17	17	15	164	16.4
	Total All Passengers	43	49	50	46	49	52	52	41	52	45	479	47.9

Daily except Saturday, Sunday and Holidays

NEW YORK, SUSQUEHANA AND WESTERN RAILROAD COMPANY.

Statement Showing the Total Number of Revenue Passengers "On and Off" and the Average Per Day Using Train 923 Departing Susquehanna Transfer, N.J. 5:37 PM Arriving Butler, N.J. 6:42 PM, for Period October 17th to October 21st, and October 24th to October 28th, inclusive, 1960.

From	To	OCTOBER										Total Pggrs	Average Pggrs Per Day
		17	18	19	20	21	24	25	26	27	28		
Susquehanna Tfr.	No. Bergen	0	0	0	0	0	0	0	0	0	0	0	0
	Babbitt	0	0	0	0	0	0	0	0	0	0	0	0
	Little Ferry	0	0	0	0	0	0	0	0	0	0	0	0
	Ridgefield Park	0	0	0	0	0	0	0	0	0	0	0	0
	Bogota	0	0	0	0	0	0	0	0	0	0	0	0
	Hackensack	0	0	0	0	0	0	0	0	0	0	0	0
	Prospect Avenue	0	0	0	0	0	0	0	0	0	0	0	0
	Maywood	15	15	14	13	18	17	23	14	16	15	160	16.0
	Rochelle Park	14	10	17	13	16	15	14	13	18	17	147	14.7
	Passaic Jct.	0	0	0	0	0	0	0	0	0	0	0	0
	East Paterson	0	0	0	0	0	0	0	0	0	0	0	0
	Vreeland Avenue	10	9	9	6	9	6	10	8	10	13	90	9.0
	Paterson B'way	13	17	14	19	15	15	21	12	15	17	158	15.8
	Riverside	0	0	0	0	0	0	0	0	0	0	0	0
	Hawthorne	23	21	22	22	15	24	27	25	18	21	218	21.8
	No. Hawthorne	7	11	10	7	8	9	10	10	7	8	87	8.7
	Midland Park	6	4	5	4	4	3	5	6	7	4	48	4.8
	Wortendyke	3	2	2	3	1	4	2	3	3	4	27	2.7
	Wyckoff	20	18	20	20	17	21	20	17	20	19	192	19.2
	Campgaw	1	2	1	2	0	0	1	3	1	1	12	1.2
	Crystal Lake	0	0	1	0	0	0	0	0	0	0	1	1
	Oakland	3	5	5	4	4	2	6	5	5	7	46	4.6
	Pompton Lakes	0	0	0	0	0	0	0	0	0	0	0	0
	Butler	0	0	0	0	0	0	0	0	0	0	0	0
	Total	115	120	107			116	116	126			1,186	11.8
		114	113				139	120					
Paterson, N.J.		52	51	54	51	58	53	68	47	59	62	555	55.5
and East													
Hawthorne and		30	32	32	29	23	33	37	35	25	29	305	30.5
No. Hawthorne, N.J.													
Midland Park, N.J.		22	21	20	22	26	20	21	21	26	25	206	20.6
and West													

From	To	OCTOBER										Total Pgtrs	Average Pgtrs Per Day
		17	18	19	20	21	24	25	26	27	28		
Susquehanna Tfr.	No. Bergen	0	0	0	0	0	0	0	0	0	0	0	0
	Babbitt	0	0	0	0	0	0	0	0	0	0	0	0
	Little Ferry	0	0	0	0	0	0	0	0	0	0	0	0
	Ridgefield Park	0	0	0	0	0	0	0	0	0	0	0	0
	Bogota	0	0	0	0	0	0	0	0	0	0	0	0
	Hackensack	0	0	0	0	0	0	0	0	0	0	0	0
	Prospect Avenue	0	0	0	0	0	0	0	0	0	0	0	0
	Maywood	15	15	14	13	18	17	23	14	16	15	160	16.0
	Rochelle Park	14	10	17	13	16	15	14	13	18	17	147	14.7
	Passaic Jct.	0	0	0	0	0	0	0	0	0	0	0	0
	East Paterson	0	0	0	0	0	0	0	0	0	0	0	0
	Vreeland Avenue	10	9	9	6	9	6	10	8	10	13	90	9.0
	Paterson B'way	13	17	14	19	15	15	21	12	15	17	158	15.8
	Riverside	0	0	0	0	0	0	0	0	0	0	0	0
	Hawthorne	23	21	22	22	15	24	27	25	18	21	218	21.8
	No. Hawthorne	7	11	10	7	8	9	10	10	7	8	87	8.7
	Midland Park	6	4	5	4	4	3	5	6	7	4	48	4.8
	Wortendyke	3	2	2	3	1	4	2	3	3	4	27	2.7
	Wyckoff	20	18	20	20	17	21	20	17	20	19	192	19.2
	Campgaw	1	2	1	2	0	0	1	3	1	1	12	1.2
	Crystal Lake	0	0	1	0	0	0	0	0	0	0	1	1
	Oakland	3	5	5	4	4	2	6	5	5	7	46	4.6
	Pompton Lakes	0	0	0	0	0	0	0	0	0	0	0	0
	Butler	0	0	0	0	0	0	0	0	0	0	0	0
	Total	115	120	107			116	116	126			1,186	11.8
		114	113				119	120					
	Paterson, N.J. and East	52	51	54	51	58	53	68	47	59	62	555	55.5
	Hawthorne and No. Hawthorne, N.J.	30	32	32	29	23	33	37	35	25	29	305	30.5
	Midland Park, N.J. and West	33	31	34	33	26	30	34	34	36	35	326	32.6
	Intrastate Passengers	2	1	1	2	1	2	2	1	2	1	15	1.5
	Total All Passengers	117	121	108			118	117	127			1,201	120.1
		115	115				111	122					

Daily except Saturday, Sunday and Holidays

Office of Revenue and Disbursements
Paterson - New Jersey
Dec. 5, 1960

136

Exhibit No. 136 to Statement
[fol. 136]

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

Statement Showing the Total Number of Revenue Passengers "On and Off" and the Average Per Day Using Train 929 Departing Susquehanna Transfer, N.J. 5:50 PM, Arriving Butler, N.J. 7:02 PM, for Period October 17th to October 21st, and October 24th to October 28th, inclusive, 1960

To	OCTOBER										Total psgrs	Average Psgrs Per Day
	17	18	19	20	21	24	25	26	27	28		
Susquehanna Tfr.												
No. Bergen	0	0	0	0	0	0	0	0	0	0	0	0
Babbitt	0	0	0	0	0	0	0	0	0	0	0	0
Little Ferry	0	0	0	0	0	0	0	0	0	0	0	0
Ridgefield Park	0	0	0	0	0	0	0	0	0	0	0	0
Bogota	1	2	1	2	1	1	2	2	1	2	15	1.5
Hackensack	0	0	0	0	0	0	0	0	0	0	0	0
Prospect Avenue	0	2	0	0	1	1	0	0	0	1	5	.3
Maywood	8	5	7	7	6	6	1	4	2	4	50	5.0
Rochelle Park	7	9	6	8	2	5	4	6	4	1	52	5.2
Passaic Jct.	0	0	0	0	0	0	0	0	0	0	0	0
East Paterson	0	0	1	1	2	1	0	1	1	1	8	.8
Vreeland Avenue	2	5	6	4	3	5	2	4	4	2	37	3.7
Paterson B'way	10	6	8	6	5	8	3	9	0	5	66	6.6
Riverside	0	0	0	0	0	0	0	0	0	0	0	0
Hawthorne	3	3	3	3	4	4	1	4	6	4	35	3.5
No. Hawthorne	1	1	2	1	3	2	0	1	3	2	16	1.6
Midland Park	2	1	1	3	2	1	1	3		1	15	1.5
Wortendyke	0	1	1	0	0	0	1	0		0	3	.3
Wyckoff	2	1	1	0	2	2	0	1	3	3	15	1.5
Campgaw	1	1	1	0	1	0	1	1	0	0	6	.6
Crystal Lake	1	1	0	1	1	1	1	1	1	1	9	.9
Oakland	1	1	1	2	1	0	1	2	3	1	13	1.3
Pompton Lakes	0	0	0	0	0	0	0	0	0	0	0	0
Butler	0	0	0	0	0	0	0	0	0	0	0	0
Total	39	39	39	38	34	37	18	39	34	28	345	34.5
Paterson, N.J. and East	28	29	29	28	20	27	12	26	18	16	233	23.3
Hawthorne and No. Hawthorne, N.J.	4	4	5	4	7	6	1	5	9	6	51	5.1
Midland Park, N.J. and West	7	6	5	6	7	4	5	8	7	6	61	6.1
Intrastate Passengers	4	3	1	3	1	4	1	4	2	2	25	2.5
Total All Passengers	43	42	40	41	35	41	19	43	36	30	370	37.0

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY

Statement Showing the Total Number of Revenue Passengers "On and Off" and the Average Per Day Using Train 929 Departing Susquehanna Transfer, N.J. 5:50 PM, Arriving Butler, N.J. 7:02 PM, for Period October 17th to October 21st, and October 24th to October 28th, inclusive, 1960

From	To	OCTOBER										Total. psgrs	Average Psgrs Per Day
		17	18	19	20	21	24	25	26	27	28		
From Susquehanna Tfr.	No. Bergen	0	0	0	0	0	0	0	0	0	0	0	0
	Babbitt	0	0	0	0	0	0	0	0	0	0	0	0
	Little Ferry	0	0	0	0	0	0	0	0	0	0	0	0
	Ridgefield Park	0	0	0	0	0	0	0	0	0	0	0	0
	Bogota	1	2	1	2	1	1	2	2	1	2	15	1.5
	Hackensack	0	0	0	0	0	0	0	0	0	0	0	0
	Prospect Avenue	0	2	0	0	1	1	0	0	0	1	5	.5
	Maywood	8	5	7	7	6	6	1	4	2	4	50	5.0
	Wochelle Park	7	9	6	8	2	5	4	6	4	1	52	5.2
	Passaic Jct.	0	0	0	0	0	0	0	0	0	0	0	0
	East Paterson	0	0	1	1	2	1	0	1	1	1	8	.8
	Vreeland Avenue	2	5	6	4	3	5	2	4	4	2	37	3.7
	Paterson B'way	10	6	8	6	5	8	3	9	6	5	66	6.6
	Riverside	0	0	0	0	0	0	0	0	0	0	0	0
	Hawthorne	3	3	3	3	4	4	1	4	6	4	35	3.5
	No. Hawthorne	1	1	2	1	3	2	0	1	3	2	16	1.6
	Midland Park	2	1	1	3	2	1	1	3	0	1	15	1.5
	Wortendyke	0	1	1	0	0	0	1	0	0	0	3	.3
	Wyckoff	2	1	1	0	2	2	0	1	3	3	15	1.5
	Campgaw	1	1	1	0	1	0	1	1	0	0	6	.6
	Crystal Lake	1	1	0	1	1	1	1	1	1	1	9	.9
	Oakland	1	1	1	2	1	0	1	2	3	1	13	1.3
	Pompton Lakes	0	0	0	0	0	0	0	0	0	0	0	0
	Butler	0	0	0	0	0	0	0	0	0	0	0	0
	Total	39	39	39	38	34	37	18	39	34	28	345	34.5
Paterson, N.J. and East		28	29	29	28	20	27	12	26	18	16	233	23.3
Hawthorne and No. Hawthorne, N.J.		4	4	5	4	7	6	1	5	9	6	51	5.1
Midland Park, N.J. and West		7	6	5	6	7	4	5	8	7	6	61	6.1
Intrastate Passengers		4	3	1	3	1	4	1	4	2	2	25	2.5
Total All Passengers		43	42	40	41	35	41	19	43	36	30	370	37.0

Daily Except Saturday, Sunday and Holidays

[fol. 138]

EXHIBIT NO. 14 TO STATEMENT

NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY.METHODS USED IN DETERMINING EXPENSES
AND REVENUES ON EXHIBITS NOS. 14-A to 14-C.

EXPENSES.

WAGES (TRAIN AND ENGINE CREWS).

Wages of crews are actual costs based on actual "On Duty" and "Off Duty" time to determine daily payments plus overtime payments.

Monthly guarantee and arbitrary payments are included in wages of conductors and trainmen.

To the wages are added the cost to carrier of Railroad Retirement and Unemployment Taxes, based on the earnings up to (\$350.00 per month for 1958), (\$350.00 per month January to May 31, 1959), and (\$400.00 per month from June 1, 1959 to date). Three-fifty seconds (3 52nds) of annual earnings is added to Crew Costs to cover Vacation Allowance.

REPAIRS TO LOCOMOTIVES.

The charges to Account 311—Diesel Locomotive Repairs—Other—divided by the *total* locomotive miles operated to determine the cost per locomotive mile. Locomotives are used both in freight and passenger service.

REPAIRS TO PASSENGER CARS.

The charges to Account 317—Passenger Train Car Repairs are actual, divided by number of passenger car miles operated to determine the cost per car mile.

FUEL FOR LOCOMOTIVES

Fuel per locomotive mile for locomotives in passenger service based on 1.1 gallon per locomotive mile based on study by Motive Power Department, multiplied by cost reported on Form OS-E—Fuel & Power Statistics, to Interstate Commerce Commission.

TRAIN SUPPLIES AND EXPENSES

Based on cost chargeable to Account 462—Train Supplies and Expenses, divided by total passenger train miles operated.

DEPRECIATION

Based on cost of equipment as carried on books of Company in Account 731—Road and Equipment, at rate prescribed by Interstate Commerce Commission, effective January 1, 1955, Order No. B 593-C.

REVENUES

The revenues for 1958 and 1959 are based on studies from actual detailed count of tickets surrendered and cash fares paid. Year 1958 based on five days of October 13th [fol. 139] thru 17th inclusive. Year 1959 based on five days of October 19th thru October 23rd inclusive. The average number of passengers per day was determined, applied to number of days trains operated (255 days in 1958), (256 days in 1959), multiplied by average revenue per passenger as reported to Interstate Commerce Commission in Form A, Page 509, Line 48 (1958—46c) (1959—48c).

Revenue for year 1960 is based on actual revenue collected in two five-day periods respectively on October 17th and October 24th, projected to annual basis.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

Statement of Revenues and Selected Items of Expense
in Connection with the Operation of Trains 908 and 919
for Years 1958, 1959 and Nine Months of Year 1960.

	1958	1959	Nine Months 1960
(A) - <u>Expenses:</u>			
1. Wages (Train and Engine Crew)	\$32,032	\$32,488	\$26,764
2. Payroll Taxes	1,470	1,677	1,288
3. Vacation Allowances	1,848	1,874	1,449
4. Repairs to Locomotives	8,425	10,609	9,182
5. Repairs to Passenger Cars	1,610	1,828	1,519
6. Fuel for Locomotives	2,477	2,508	1,557
7. Train Supplies and Expenses	5,839	2,502	2,984
8. Depreciation - Locomotives and Cars	10,143	8,015	5,633
9. Erie Railroad Track & Jersey City, N.J. Passenger Terminal Facilities	20,195	6,843	4,942
10. Total Expenses	\$84,039	\$68,344	\$55,318
(B) - <u>Revenues:</u>			
11. Passenger	\$33,431	\$31,334	\$23,198
12. Less Amount Chargeable to (Account 102 - Passenger Revenue) Account Erie RR Ferry	3,501	-	-
13. Net Passenger Revenue	\$29,930	\$31,334	\$23,198
(C) - Loss:	\$54,109	\$37,010	\$32,120

Figures for 1958 and 1959 are actual.

Figures for 1960 are computed in manner set forth in petition.

[fol. 140]

EXHIBIT No. 14A to STATEMENT

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

Statement of Revenues and Selected Items
of Expense in Connection with Operation
of Trains 910 and 923 for Years 1958,
1959 and For Nine Months of Year 1960.

	1958	1959	Nine Months 1960
(A) - <u>Expenses:</u>			
1. Wages (Train and Engine crew)	\$32,867	\$33,540	\$27,662
2. Payroll Taxes	1,470	1,676	1,288
3. Vacation Allowance	1,893	1,932	1,458
4. Repairs to Locomotives	8,425	10,609	9,182
5. Repairs to Passenger Cars	2,117	2,285	2,659
6. Fuel for Locomotives	2,477	2,507	1,557
7. Train Supplies and Expenses	7,785	3,128	5,222
8. Depreciation - Locomotives and Cars	12,272	9,053	6,249
9. Erie Railroad Track & Jersey City, N.J. Passenger Terminal Facilities	20,197	6,843	4,942
10. Total Expenses	\$89,533	\$71,573	\$60,219
(B) - <u>Revenues:</u>			
11. Passenger	\$62,990	\$55,050	\$46,784
12. Less amount Chargeable to (Account 102 - Passenger Revenue) Account Erie RR Ferry	3,501	-	-
13. Net Passenger Revenue	\$59,489	\$55,050	\$46,784
(C) - <u>Loss:</u>	\$30,044	\$16,523	\$13,435

Figures for 1958 and 1959 are actual.

Figures for 1960 are computed in manner set forth in petition

Office of Revenue and Disbursements
Paterson - New Jersey
December 27, 1960

EXHIBIT NO. 14B TO STATEMENT

141

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

Statement of Revenues and Selected Items
of Expense in Connection with the
Operation of Trains 916 and 929
For Years 1958, 1959 and Nine
Months of Year 1960.

	1958	1959	Nine Months 1960
(A) - Expenses:			
1. Wages (Train and Engine Crew)	\$31,811	\$32,487	\$26,764
2. Payroll Taxes	1,470	1,676	1,288
3. Vacation Allowance	1,832	1,871	1,449
4. Repairs to Locomotives	8,425	10,609	9,185
5. Repairs to Passenger Cars	1,073	1,371	1,140
6. Fuel for Locomotives	2,477	2,507	1,559
7. Train Supplies & Expenses	3,892	1,877	2,239
8. Depreciation - Locomotives and Cars	8,015	6,950	5,017
9. Erie Railroad Track & Jersey City, N.J. Passenger Terminal Facilities	20,195	6,843	4,943
10. Total Expense	\$79,190	\$66,191	\$53,584
(B) - Revenues:			
11. Passenger	\$30,029	\$31,212	\$40,801
12. Less amount Chargeable to (Account 102 - Passenger Revenue) Account Erie R.R. Ferry	3,501		
Net Passenger Revenue	\$26,528	\$31,212	\$40,801
(C) - Loss:	\$52,662	\$34,979	\$12,783

Figures for 1958 and 1959 are actual.

Figures for 1960 are computed in manner set forth in petition.

Office of Revenue and Disbursements
Paterson - New Jersey
December 27, 1960

EXHIBIT No. 14C TO STATEMENT

142

Notice of Proposed Discontinuance of Service

BEFORE THE INTERSTATE COMMERCE COMMISSION

New York, Susquehanna and Western Railroad Company, 160 Market Street, Paterson 1, N. J., hereby gives notice under Section 13a (1) of the Interstate Commerce Act (Transportation Act of 1958, Public Law 85-625, 85th Congress, 2nd Session) that effective 12:01 A. M., January 30, 1961, it will discontinue operation of its eastbound passenger trains Nos. 908, 910, 916 and westbound passenger trains 919, 923 and 929 operating daily except Saturday, Sunday and holidays and westbound passenger train No. 915 operating Good Friday, Election Day, December 23rd and December 30th. The eastbound trains operate between Butler, New Jersey and New York, New York. The westbound trains operate between New York, New York and Butler, New Jersey.

All these trains serve the following stations, depots or facilities:

Butler, N. J.	Hawthorne, N. J.
Oakland, N. J.	Paterson (Broadway), N. J.
Campgaw, N. J.	Vreeland Ave. (Paterson), N. J.
Wyckoff, N. J.	Rochelle Park, N. J.
Wortendyke, N. J.	Maywood, N. J.
Midland Park, N. J.	Port Authority Bus Terminal,
North Hawthorne, N. J.	New York, N. Y.

The following stations, depots or facilities are served by the trains whose numbers are shown opposite their name:

Pompton Lakes, N. J.	908, 910, 915, 919 & 929
West Oakland, N. J.	910, 915, 919 & 929
Crystal Lake, N. J.	908, 919 & 929
East Paterson, N. J.	908, 916, 915, 919 & 929
Prospect Ave. (Hackensack), N. J.	908, 916, 915, 919 & 929
Hackensack, N. J.	908, 910, 916, 915, 919 & 929
Bogota, N. J.	908, 916, 915, 919 & 929
Ridgefield Park, N. J.	908, 916, 919 & 929
Little Ferry, N. J.	916 & 929
Babbitt, N. J.	908 & 919
North Bergen, N. J.	908

Discontinuance of Service

New York, Susquehanna and Western Railroad Company, 160 Market Street, Paterson 1, N. J., hereby gives notice under Section 13a (1) of the Interstate Commerce Act (Transportation Act of 1958, Public Law 85-625, 85th Congress, 2nd Session) that effective 12:01 A. M., January 30, 1961, it will discontinue operation of its eastbound passenger trains Nos. 908, 910, 916 and westbound passenger trains 919, 923 and 929 operating daily except Saturday, Sunday and holidays and westbound passenger train No. 915 operating Good Friday, Election Day, December 23rd and December 30th. The eastbound trains operate between Butler, New Jersey and New York, New York. The westbound trains operate between New York, New York and Butler, New Jersey.

All these trains serve the following stations, depots or facilities:

Butler, N. J.	Hawthorne, N. J.
Oakland, N. J.	Paterson (Broadway), N. J.
Campgaw, N. J.	Vreeland Ave. (Paterson), N. J.
Wyckoff, N. J.	Rochelle Park, N. J.
Wortendyke, N. J.	Maywood, N. J.
Midland Park, N. J.	Port Authority Bus Terminal,
North Hawthorne, N. J.	New York, N. Y.

The following stations, depots or facilities are served by the trains whose numbers are shown opposite their name:

Pompton Lakes, N. J.	908, 910, 915, 919 & 929
West Oakland, N. J.	910, 915, 919 & 929
Crystal Lake, N. J.	908, 919 & 929
East Paterson, N. J.	908, 916, 915, 919 & 929
Prospect Ave. (Hackensack), N. J.	908, 916, 915, 919 & 929
Hackensack, N. J.	908, 910, 916, 915, 919 & 929
Bogota, N. J.	908, 916, 915, 919 & 929
Ridgefield Park, N. J.	908, 916, 919 & 929
Little Ferry, N. J.	916 & 929
Babbitt, N. J.	908 & 919
North Bergen, N. J.	908

Persons desiring to object to the proposed discontinuance should promptly notify the Interstate Commerce Commission at Washington, D. C. of such objection and reasons therefor, at least 15 days before the effective date of the proposed discontinuance.

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY**

160 Market Street
Paterson 1, N. J.

143

December 29, 1960

[fol. 144]

[Handwritten notation—Jan--9, '61.]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 21417

PETITION OF THE STATE OF NEW JERSEY AND ITS BOARD OF PUBLIC UTILITY COMMISSIONERS FOR AN INVESTIGATION UNDER SECTION 13a (1) OF THE PROPOSED DISCONTINUANCE OF OPERATION OF ALL OF ITS PASSENGER TRAINS BY NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY—January 5, 1961

David D. Ferman
Attorney General of the
State of New Jersey
State House Annex
Trenton 25, New Jersey

Of Counsel:

William Gural, Deputy Attorney General
Henry B. Freefield
c/o Board of Public Utility Commissioners
101 Commerce Street
Newark 2, New Jersey

Dated: January 5, 1961.

[fol. 145] Come now the ~~sovereign~~ State of New Jersey and its Board of Public Utility Commissioners, hereinafter called Petitioners, in support of their petition for an investigation under Section 13a (1) of the Interstate Commerce Act of the proposed discontinuance of operation of all of its passenger trains by New York, Susquehanna and Western Railroad Company.

I

The Board of Public Utility Commissioners of the State of New Jersey, ~~one~~ of the Petitioners herein, is a body created by statute and is vested with jurisdiction over common carriers by railroad within New Jersey, including jurisdiction over intrastate passenger service.

II

New York, Susquehanna and Western Railroad Company, hereinafter called Susquehanna, is a common carrier by railroad subject to the provisions of the Interstate Commerce Act and engaged, among other things, in the operation of passenger trains interstate between points in the State of New Jersey. Susquehanna passengers whose destination is New York, New York, use a motor-coach service from Susquehanna Transfer (North Bergen), New Jersey to New York, New York. However, Susquehanna's passenger trains operate between Butler, New Jersey and Susquehanna Transfer in North Bergen, New Jersey and all intermediate points are located within the State of New Jersey.

III

On December 30, 1960 the Honorable Robert B. Meyner, Governor of the State of New Jersey, and the Honorable Edward F. Hamill, Secretary, Board of Public Utility Commissioners of New Jersey, received by mail a copy of a notice issued by Susquehanna proposing discontinuance under Section 13a (1) of the Interstate Commerce Act of all of its passenger train service and a copy of its "Statement in Relation to Proposed Discontinuance of Train Service." The notice of proposed discontinuance of service states that effective 12:01 A. M., January 30, 1961, Susquehanna will discontinue operation of its eastbound passenger trains Nos. 908, 910, 916 and westbound passenger trains 919, 923 and 929 operating daily except Saturday, Sunday and holidays, and westbound passenger train No. 915 operating Good Friday, Election Day, December 23rd and December 30th.

IV

Susquehanna's "Statement in Relation to Proposed Discontinuance of Train Service" reads (page 2): "The operation is by rail to a point called Susquehanna Transfer, located in the Township of North Bergen, New Jersey [fol. 147] thence to Port Authority Bus Terminal by contract bus operated exclusively for Susquehanna's passen-

gers by Public Service Coordinated Transport. The foregoing operation makes these interstate traffic within the purview of subdivision (1) of Section 13a of the Interstate Commerce Act. See extracts from reports of this Commission approving this contract bus operation, and from opinion of the United States Supreme Court, in Exhibit 2 hereto."

Exhibit 2 quotes from Commission findings in *New York, S. & W. R. Co. Common Carrier Application*, 34 M.C.C. 581 (1942); on rehearing 46 M.C.C. 713 (1946), and a statement by Division 2 in *Consolidation of Rates, New York, S. & W. R. Co.*, 280 I.C.C. 31 (1951); also statements of the Supreme Court in *Chicago v. Atchison, T. & S. F. R. Co.*, 357 U.S. 77 (1958).

Exhibit 2 does not contain the following quotation, taken from *New York, S. & W. R. Co. Common Carrier Application*, 41 M.C.C. 713, 725:

"Certain protestants contend that if the described service is found to be within the exemption in question, applicant is required to obtain a certificate in accordance with section 1 (18) of the act. That section provides that it shall be unlawful for any carrier by railroad subject to the act to undertake the extension of its line of railroad or to engage in transportation over such extended line unless and until it first shall have obtained from us a certificate of public convenience and necessity, except that, under section 1 (22) such requirement does not apply in the case of the construction of spur, industrial, team, switching, or side tracks wholly within one State. Section 1 (18) is applicable here only in the event the described operation constitutes in fact an extension of applicant's line of railroad. [fol. 148] The instant situation is comparable to that considered by the Commission, division 4, in *Arlington & F. A. R. Co. Extension of Operation*, 228 I.C.C. 479, and we conclude for the reasons there stated that applicant's described motor operation is not an extension of railroad as contemplated by section 1 (18). The certificate requirements of section 1 (18), therefore, are inapplicable."

The Commission stated in *Arlington & F. A. B. Co. Extension of Operation*, 228 I.C.C. 479, 481:

"The Supreme Court has indicated by its language in several cases that it considers an extension of a line of railroad to mean an extension of the tracks or of the physical facilities that are themselves essential to the operation of a railroad. *Texas & P. Ry. Co. v. Gulf, C. & S. F. Ry. Co.*, 270 U.S. 266, *California R. Comm. v. Southern Pac. Co.*, 264 U.S. 331. In *New York Dock Ry. v. Pennsylvania R. Co.*, 62 Fed. (2d) 4010, decided by the Circuit Court of Appeals for the Third Circuit, certiorari denied by the Supreme Court, 289 U.S. 750, a suit had been brought to enjoin the Pennsylvania Railroad Company from establishing without our approval a pick-up and delivery freight service in New York City by means of motortrucks operated to and from the railroad terminals belonging to that carrier located along the waterfront. The complainants contended that the proposed service constituted an extension of the line of railroad for which a certificate of public convenience and necessity was required by section 1 (18) of the Interstate Commerce Act. The court therein differentiated between an extension of a line of railroad and an extension of transportation service and pointed out that there was no requirement that a certificate be obtained for the latter. It found that the proposed service was not a line of railroad and was not an extension of a [fol. 149] line of railroad within the meaning of the act. The decision clearly shows that an extension of a line of railroad within the meaning of the section herein involved means an extension of the railroad itself and not of service appurtenant thereto.

Susquehanna now asks the Commission to consider the motor bus operation between Susquehanna Transfer and New York City as a line of its railroad or an extension of its line of railroad over which its trains operate between points in New Jersey and New York. The fact is that Susquehanna's trains do not operate between Susquehanna Transfer and New York City. The Commission has found

that the motorbus service between Susquehanna Transfer and New York City is not a line of railroad or an extension of a line of railroad.

Your petitioners, therefore, pray that the Commission enter upon an investigation of the proposed discontinuance and your petitioners move that the Commission dismiss the case without prejudice since, for the reasons set out above, your petitioners believe that the matter has been improperly brought under section 13a (1) of the act in the first instance.

V

Petitioner, Board of Public Utility Commissioners of the State of New Jersey, has pending before the Commission in Finance Docket No. 21049 an application under paragraph 2 of section 5 of the Interstate Commerce Act for an order of approval and authorization of acquisition of trackage rights by Susquehanna over railroad lines owned or operated by The Delaware, Lackawanna and Western Railroad Company and Erie Railroad Company (now Erie Lackawanna Railroad Company), and the joint use of the Hoboken, New Jersey terminal incident thereto.

[fol. 150] All rights of your petitioners in Finance Docket No. 21049 and in the present proceeding are reserved, and failure to adduce arguments on the merits shall not be construed as a waiver of any rights to produce evidence, cross-examine witnesses, or otherwise participate in the above-named proceedings or any related proceedings that may be instituted before the Commission.

Respectfully submitted,

David D. Fufman, Attorney General of the State of New Jersey, State House Annex, Trenton 25, New Jersey, By: William Gural, Deputy Attorney General, Henry B. Freefield, c/o Board of Public Utility Commissioners.

Dated: January 5, 1961

[fol. 151] Certificate of Service (omitted in printing).

[fol. 153]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21417

In the Matter of

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY
Discontinuance of Passenger Service Between New
York, N. Y., and Butler, N. J.

REPLY TO THE PETITION OF THE STATE OF NEW JERSEY AND
ITS BOARD OF PUBLIC UTILITY COMMISSIONERS

REQUEST FOR EXTENSION OF TIME—January 27, 1961

Comes now the New York, Susquehanna and Western Railroad Company, the carrier proposing the discontinuance in the above-captioned matter, by way of reply to the Petition of the State of New Jersey and its Board of Public Utility Commissioners, and says that:

I

The said petition is not directed to the merits of the above-captioned matter in that it makes no contention that the subject service between New York, N.Y. and Butler, N. J. is required by public convenience and necessity, and that it will not unduly burden inter-state or foreign commerce.

II

The said petition is, in substance, a motion to dismiss for supposed lack of jurisdiction to which the carrier is entitled to file and serve a reply within 20 days after the filing of said petition on January 9, 1961.

III

The said petition must be taken to admit the statements contained in the "Statement" filed by the carrier in this

[fol. 154] matter, for the purposes of the motion, but it attempts to advance the argument of the motion on the basis of facts contrary to those set forth in said "statement".

IV

The said motion is predicated upon the argument that in a physical sense the train locomotive and passenger car of each train moves between Butler, N. J. and Susquehanna Transfer, also within the boundaries of New Jersey, and that the contract bus service between Susquehanna Transfer and New York, N. Y. is not part of a line of railroad within the meaning of section 1(18) of the act. The argument is erroneous because

(a) the meaning of the term "line of railroad" as used in section 1(18) of the act is neither relevant to nor dispositive of the question of the applicability of section 13a(1);

(b) the authorities cited in and by said petition establish a distinction between the term "a line of railroad" and the term "service"; and while section 1(18) of the act is applicable only to "a line of railroad", section 13a(1) embraces within its purview the "operation" or "service" of a train from a point in one State to a point in another State;

(c) by virtue of the provisions of section 202 (c) of the act, "the provisions of this part" [Part II] "shall not apply" to transportation by motor vehicle by a carrier by railroad subject to Part I; but such transportation shall be considered to be and shall be regulated as transportation subject to Part I when performed by such carrier by railroad; and, since said section 13(a)1 is encompassed within said Part I, the said contract bus service is deemed, in contemplation of law, to be the equivalent of the physical operation of the said trains between the points served by the said buses;

[fol. 155] (d) to the extent that there may be any conflict between the term "line of railroad" as used in section 1(18)

of the act, and the terms "operation" and "service" as used in section 13(a)1 of the act, the latter, as the most recent expression of the intention of the Congress, must prevail;

(e) the said petition admits, at least by failure to deny if not by reason of being required to admit for the purposes of the motion, the repeated findings of the Commission set out in Exhibit 2 attached to the "Statement" filed by the carrier holding, in substance, that the carriage of passengers by motor coach between New York, N.Y. and Susquehanna Transfer is an intraterminal operation within the carrier's terminal area at New York; that such service is incidental to transportation by rail; that North Berge (where Susquehanna Transfer is located) is within the carrier's terminal area at "New York"; that no tickets are sold to or from Susquehanna Transfer, and that it is not intended that any passenger should either start or terminate a trip at that point; its use being limited solely to the transfer of passengers from train to bus or from bus to train; that the motor coach service carries no passengers except passengers carried by the train with New York as their destination, or to be carried by the train with New York as their point of origin.

V

The said motion purports to contend that the subject trains operate intrastate between Butler and Susquehanna Transfer; but it nowhere asserts that there is not an interstate service or operation; and the mere fact that there is an insignificant and trivial use of the trains by a very small number of passengers intrastate fails to establish that the interstate operation or service is not within the purview of section 13(a)1 of the act.

[fol. 156]

VI

The said motion does not in any way deny or refute the facts set forth in Exhibits Nos. 13-A through 13-F, setting out the results of actual day-to-day counts of inter-

state and intrastate passengers and which show a daily average number of passengers in each category as follows:

Train No.	Total	Interstate #	Intrastate
908	47.7	39.7	8.0
910	126.4	120.1	6.3
916	112.5	91.2	21.3
919	47.9	31.5	16.4
923	120.1	118.6	1.5
929	37.0	34.5	2.5

These facts show, beyond shadow of doubt, the insubstantial nature of any contention that the subject trains are of primarily intrastate, rather than interstate, nature.

VII

The motion asserts that the carrier asks the Commission to consider the motor bus operation as a "line of its rail road", or as an "extension of its line of railroad" over which its trains operate between points in New Jersey and New York. The assertion is an incorrect interpretation. The physical facts are well known and not in dispute. The carrier contends that the carriage of passengers by rail to Susquehanna Transfer and by motor bus thence to New York (and in reverse sequence from New York to New Jersey) is an operation or service within the purview of section 13(a)1 as a matter of law.

VIII

The motion is defective in that, if the contention thereof be accepted, the unavoidable result thereof will be that the carrier can freely, and without jurisdiction of this Commission, terminate the motor coach service between Susquehanna Transfer and New York, which service, being obviously interstate in nature, is beyond the jurisdiction (P.L. 157) of any State Board of Public Utility Commissioners, and in the operation of the subject trains between Butler, N. J. and Susquehanna Transfer (to which no tickets are sold) for the use of passengers averaging from

1.5 to 21.3 on the basis of the data set forth in Exhibits Nos. 13-A through 13-F. To say that this result will follow, as it must, refutes the contention of lack of jurisdiction in this Commission in view of the effect of terminating interstate service for passengers averaging from 31.5 to 120.1, according to the said Exhibits.

IX

Request for Extension of Time

The carrier requests the granting of an extension of time for the filing of its reply to the petition of the State of New Jersey and its Board of Public Utility Commissioners (it being the intention that if said request be granted, it will file and serve an amended reply in lieu of this reply) to and including February 20, 1961, because of the following extraordinary circumstances (this request being made less than 10 days prior to the due date of the above reply):

(a) the preparation of the proceedings for proposed discontinuance of passenger service in this matter was attended to by Leon Leighton, Esq., who for some years had been responsible for the preparation and presentation of all matters before the Commission in which the carrier had an interest, the preparation in this instance being very detailed and complicated;

(b) subsequent to the posting of notices on December 29, 1960 and the filing of the carrier's Statement herein on December 30, 1960 and in the early part of January, 1961, the relationship of attorney and client between the carrier and said attorney was terminated (but under circumstances in no way reflecting upon the integrity, performance or professional ability of said attorney), and the carrier requested its general counsel, the law firm of Lum, Bionno & [fol 158] Tompkins, to undertake the further processing of all pending matters theretofore in the hands of the said attorney, said firm having had no previous responsibility for or familiarity with the instant matter;

(c) the foregoing matters were reported by the carrier to its said general counsel on or about January 13, 1961, and a conference to enumerate and gather information about such pending matters was held on January 16, 1961, at which time the notice, the "Statement" of the carrier, and the petition of the State of New Jersey and its Board of Public Utility Commissioners were delivered to said general counsel and were seen by them for the first time;

(d) the above occurrences came about without advance notice, and the bulk and complexity of the various pending matters so received, in addition to the unforeseeable arising of a number of matters of a critical and emergency nature for other clients as well in the period from January 16, 1961 and the date hereof, made it humanly impossible to prepare a full and thorough reply. The above reply is accordingly filed with this request in order to afford counsel a reasonable time to review the matter and determine whether or not an amended reply should be prepared, filed and served. In the meantime, this reply is filed and served in evidence of the good faith of the carrier and its said general counsel, and in order that the Commission may be satisfied that this request is not presented for purposes of delay.

Respectfully submitted,

Vincent P. Biunno, William F. Tompkins, 605
Broad Street, Newark 2, N.J., Attorneys for
New York, Susquehanna and Western Railroad
Company.

Of Counsel: Lina Biunno & Tompkins, 605 Broad Street,
Newark 2, N. J.

[fol. 159] Certificate of Service (omitted in printing).

[fol. 161]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21417

IN THE MATTER OF NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY DISCONTINUANCE OF PASSENGER SER-
VICE BETWEEN NEW YORK, N. Y. AND BUTLER, N.J.

PETITION OF NEW YORK, SUSQUEHANNA AND WESTERN RAIL-
ROAD COMPANY FOR RECONSIDERATION OF THE ORDER OF THE
INTERSTATE COMMERCE COMMISSION, DIVISION 4, DATED
JANUARY 18, 1961—February 17, 1961

Comes now the New York, Susquehanna and Western
Railroad Company, the carrier proposing the discontinu-
ance in the above-captioned matter, in support of its
petition for reconsideration of the order of the Interstate
Commerce Commission, Division 4, dated January 18, 1961,
dismissing the notice filed by the petitioner December 30,
1960, pursuant to Section 13a(1) of the Interstate Com-
merce Act, Title 49, U.S.C. § 13a(4) for lack of jurisdiction
and says that:

I.

New York, Susquehanna and Western Railroad Company
is a common carrier by railroad subject to the provisions
of the Interstate Commerce Act, Title 49, U.S.C. § 1, et seq.,
and is engaged among other things in transporting pas-
sengers from Butler, New Jersey and other points in New
Jersey to New York City, New York.

II.

On December 30, 1960, petitioner filed notices of proposed
discontinuance of service with the Interstate Commerce
Commission, (hereinafter referred to as "Commission")
pursuant to Section 13a(1) of the Interstate Commerce
Act, Title 49, U.S.C. § 13a(1) and Title 49, Code of Federal
Regulations § 43.1, et seq. The said notices proposed that
[fol. 162] petitioner would discontinue service on its east-

bound passenger trains 908, 910 and 916 and on its west-bound passenger trains 919, 923 and 929 operating daily except Saturdays, Sundays and Holidays, and on its west-bound passenger train 915 operating Good Friday, Election Day, December 23rd and December 30th, effective 12:01 A.M. January 30, 1961. The said notices were mailed to the Governors of New York and New Jersey and were posted in every station, depot or other facility served by the said trains. In conjunction with the filing of the said notices, petitioner filed a "Statement in Relation to Proposed Discontinuance of Train Service" with the Commission, required by Title 49, Code of Federal Regulations § 43.5:

III.

On January 9, 1961, the State of New Jersey and its Board of Public Utility Commissioners (hereafter referred to as the "State"), filed a petition with the Commission praying that the Commission enter upon an investigation, and moving to dismiss the proceedings without prejudice as improperly brought under Section 13a(1) of the Act. In support of its position that the proceedings should be dismissed as improperly brought under Section 13a(1) of the Act, the State alleged that the trains operated by petitioner ran on tracks located wholly within the State of New Jersey and that the passengers traveled to New York City by a contract bus. It was further alleged by the State that Commission and Court decisions had held that the use of a bus operation did not make this operation part of a "line of railroad" or an "extension of a line of railroad" as those terms are used in Section 1(18) of the Act. It was then contended that the train operation was wholly intrastate and not within the jurisdiction of the Commission:

IV.

On January 18, 1961, prior to the time fixed by Rule 23 for petitioner to file a reply to the petition of the State, the Commission, by Division 4, entered an order dismissing the notice filed by petitioner on December 30, 1960 for lack [fol. 163] of jurisdiction. The Commission in its order of January 18, 1961 made a finding of fact that "the trains

proposed to be discontinued operate solely within the State of New Jersey" and therefore concluded "the said notice filed December 30, 1960, by the New York, Susquehanna and Western Railroad does not constitute a notice properly filed under the provisions of section 13a(1) of the Interstate Commerce Act."

V.

The order of the Commission, by Division 4, dated January 18, 1961, dismissing the notice of proposed discontinuance of service filed by petitioner on December 30, 1960 for lack of jurisdiction is improper, erroneous and illegal and should be set aside or reversed for the following reasons:

(a) Petitioner is a common carrier by railroad with authority, among others, to transport passengers by rail from points in New Jersey to New York City, New York.

(b) It is established as a matter of law (see, e.g., the *Chicago* case as well as 34 M.C.C. 581 (1942), 46 M.C.C. 713 (1946) and 280 I.C.C. 31 (1951) referred to in Exhibit 2, p. iii, annexed to petitioner's Statement herein), that "motor vehicle transportation" of an intraterminal nature is required by section 202(c) of the Act to be regarded as railroad transportation, whether performed by the railroad or, as in the present case, by an agent or contractor of its choosing; Congress is deemed to have been familiar with this requirement when it enacted section 13a(1) in 1958; wherefore it was error to conclude that petitioner's train service is only between two points in the same State.

(c) Section 13a(1) of the Act is within Part I and is applicable solely to railroads. The said section provides a method for discontinuing "the operation or service of any train or ferry operating from a point in one State to a point in any other State." The operation and service performed by petitioner, subject to Part I of the Act is to transport passengers from points in New Jersey to New York City, in New York.

[fol. 164] (d) The argument advanced by the State in its petition for an investigation and motion to dismiss con-

cerning the "line of railroad" operated by petitioner as defined in Section 10(18) of the Act is inapplicable to a proceeding brought under Section 13a(1) for the reason that the phrase "line of railroad" is not found in Section 13a(1); to the extent that these provisions may conflict, the later enactment, section 13a(1), must prevail.

(e) The legislative history of Section 13a(1), which was Section 5 of the Transportation Act of 1958, 72 Stat. 570, shows that the House Bill, HR 12832, did contain the phrase "line of railroad" but that this phrase was eliminated by the Conference Committee in the final draft which was enacted into law. 1958 U.S. Code Congressional and Administrative News pp. 3456, 3457, 3487.

(f) All of the recitals of material and relevant facts set forth in petitioner's "Statement" filed December 30, 1960 constitute evidence and are part of the record herein pursuant to Rule 19; there was no counterpleading thereto filed under the Rules of the Commission, and none of said recitals of facts were specifically denied in any such counterpleading.

(g) Petitioner was deprived of due process of law in that the Commission entered the subject Order without awaiting petitioner's Reply to the petition on which said order was based, the time for filing such Reply not having expired until January 30, 1961, without hearing or argument, and without affording petitioner a reasonable time or opportunity to be heard or to present argument on the petition upon which said Order was based.

(h) The Commission did have jurisdiction to conduct a hearing and receive argument on the question of jurisdiction advanced by the State, and it was prejudicial error to have entered the subject Order before petitioner's time to reply had expired, without hearing or argument, and without [Vol. 165] out affording petitioner a reasonable time or opportunity to be heard or to present argument thereon.

(i) Any construction of section 13a(1) of the Act which would limit its application in the case of carriers by railroad whose tracks and trains terminate their run in a

physical sense) at a river barrier forming the boundary between two States to those which continue the carriage of their passengers across such river and across the State boundary by ferry, and which would exclude such carriers when they so continue the carriage of their passengers by motor coach via river tunnel or bridge, would be in contravention of the Constitution of the United States; in that the same would constitute the giving of a preference to the ports of one State over those of another by a regulation of commerce, and would constitute a deprivation of property without due process of law; wherefore said section 13a(1) must be construed in a fashion as to include both the classes above identified so that it would not be in contravention of said Constitution.

Wherefore, your petitioner prays that the Commission reconsider the order entered January 18, 1961 by Division 4, dismissing the notices filed by your petitioner, pursuant to § 13a(1) of the Act, on December 30, 1960, seeking to discontinue its passenger trains Nos. 908, 910, 916, 919, 923, 929 and 915 operating between Butler, New Jersey and New York City, New York, for lack of jurisdiction; and that it consider petitioner's Reply to the petition of the State and afford petitioner an opportunity to be heard and present argument thereon, that it enter an order reversing and setting aside the order of January 18, 1961 and declaring that the said notices filed December 30, 1960 [fol. 166] are within the jurisdiction of the Commission and were properly filed pursuant to Section 13a(1) of the Act.

Respectfully submitted,

Vincent P. Biunno, William F. Tompkins, 605 Broad Street, Newark 2, N. J., Attorneys for New York, Susquehanna and Western Railroad Company.

Of Counsel:

Eum, Biunno & Tompkins, 605 Broad Street, Newark 2, N. J.

[fol. 167] Certificate of Service (omitted in printing).

* Application for admission has been made.

[fol. 169]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21417

In the Matter of

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY
 Discontinuance of Passenger Service Between New
 York, N. Y., and Butler, N. J.

AMENDED REPLY TO THE PETITION OF THE STATE OF NEW
 JERSEY AND ITS BOARD OF PUBLIC UTILITY COMMISSIONERS
 —February 17, 1961—

Comes now the New York, Susquehanna and Western
 Railroad Company, the carrier proposing the discontinu-
 ance in the above-captioned matter, by way of amended
 reply to the Petition of the State of New Jersey and its
 Board of Public Utility Commissioners, and says that:

I.

The said petition is not directed to the merits of the
 above-captioned matter in that it makes no contention that
 the subject service between New York, N. Y., and Butler,
 N. J., is required by public convenience and necessity, and
 that it will not unduly burden interstate or foreign com-
 merce.

II.

The said petition is, in substance, a motion to dismiss
 for supposed lack of jurisdiction to which the carrier was
 entitled to file and serve a reply within 20 days after the
 filing of said petition on January 9, 1961.

[fol. 170]

III.

The said petition must be taken to admit the statements
 contained in the "Statement" filed by the carrier in this

matter, for the purpose of the motion, but it attempts to advance the argument of the motion on the basis of facts contrary to those set forth in said "Statement".

IV.

The said petition is not a "counterpleading" to the said Statement; it does not specifically deny any of the recitals of material and relevant facts set forth in said "Statement"; wherefore all such recitals constitute evidence and are part of the record herein pursuant to Rule 19.

V.

The said motion is predicated upon the argument that in a physical sense the train locomotive and passenger car of each train moves between Butler, N. J. and Susquehanna Transfer, also within the boundaries of New Jersey, and that the contract bus service between Susquehanna Transfer and New York, N.Y. is not part of a line of railroad within the meaning of section 1(18) of the act. The argument is erroneous because

(a) the meaning of the term "line of railroad" as used in section 1(18) of the act is neither relevant to nor dispositive of the question of the applicability of section 13a(1);

(b) the authorities cited in and by said petition establish a distinction between the term "a line of railroad" and the term "service"; and while section 1(18) of the act is applicable only to "a line of railroad"; section 13a(1) [fol. 171] braces within its purview the "operation" or "service of a train from a point in one State to a point in another State;

(c) By virtue of the provisions of section 202(c) of the act, "the provisions of this part" [Part II] "shall not apply * * * to transportation by motor vehicle, by a carrier by railroad subject to Part I * * *"; but such transportation shall be considered to be and shall be regulated as transportation subject to Part I when performed by such carrier by railroad * * *"; and, since said section 13a(1) is

encompassed within said Part 1, the said contract bus service is deemed, in contemplation of law, to be the equivalent of the physical operation of the said trains between the points served by the said buses;

(d) to the extent that there may be any conflict between the term "line of railroad" as used in section 1(18) of the act, and the terms "operation" and "service" as used in section 13a(1) of the act, the latter, as the most recent expression of the intention of the Congress, must prevail;

(e) the said petition admits, at least by failure to deny if not by reason of being required to admit for the purposes of the motion, the repeated findings of the Commission set out in Exhibit 2 attached to the "Statement" filed by the carrier holding, in substance, that the carriage of passengers by motor coach between New York, N.Y. and Susquehanna Transfer is an intraterminal operation within the carrier's terminal area at New York; that such service is incidental to transportation by rail; that North Bergen (where Susquehanna Transfer is located) is within the carrier's terminal area at New York; that no tickets are sold to or from Susquehanna Transfer, and that it is not intended that any passenger should either start or terminate a trip at that point, its use being limited solely to the transfer of passengers from train to bus or from bus to train; [fol. 172] that the motor coach service carries no passengers except passengers carried by the train with New York as their destination, or to be carried by the train with New York as their point of origin;

(f) the legislative history of section 13a(1) of the Act discloses the deliberate intent of Congress to include within the purview of said section a service like that involved here, and not to limit said sections to operations on a "line of railroad" in the sense in which that term is used in section 1(18) of the Act.

VI.

The said motion purports to contend that the subject trains operate intra-state between Butler and Susquehanna Transfer; but it nowhere asserts that there is not an in-

terstate service or operation; the evidence which is part of the record discloses that the subject service is almost entirely between various points in New Jersey and New York, N.Y.; and the mere fact that there is an insignificant and trivial use of the trains by a very small number of passengers intrastate fails to establish that the interstate operation or service is not within the purview of section 13a(1) of the act.

VII.

The said motion does not in any way deny or refute the facts set forth in Exhibits Nos. 13 A through 13 F, setting out the results of actual day-to-day counts of interstate and intrastate passengers and which show a daily average number of passengers in each category as follows:

[fol. 173]

Train No.	Total	Interstate	Intrastate
908	47.7	39.7	8.0
910	126.4	120.1	6.3
916	112.5	91.2	21.3
919	47.9	31.5	16.4
923	120.1	118.6	1.5
929	37.0	34.5	2.5

These facts show, beyond shadow of doubt, the insubstantial nature of any contention that the subject trains are of primarily intrastate, rather than interstate, nature.

VIII.

The motion asserts that the carrier asks the Commission to consider the motor bus operation as a "line of its railroad", or as an "extension of its line of railroad" over which its trains operate between points in New Jersey and New York. The assertion is an incorrect interpretation. The physical facts are well known and not in dispute. The carrier contends that the carriage of passengers by rail to Susquehanna Transfer and by motor bus thence to New York (and in reverse sequence from New York to New

Jersey) is an operation of service within the purview of section 13a(1) as a matter of law.

IX.

The motion is defective in that, if the contention that, if accepted, the inevitable result thereof will be that the carrier can freely, and without jurisdiction of this Commission, terminate the contract motor coach service between Susquehanna Transfer and New York which service, being obviously interstate in nature, is beyond the jurisdiction of any State Board of Public Utility Commissioners, and leave only the operation of the subject trains between Butler, N. J. and Susquehanna Transfer (to and from which no tickets are sold) for the use of passengers averaging from 1.5 to 21.3 on the basis of the data set forth in Exhibits Nos. 13-A through 13-F. To say that this result will follow, as it must, refutes the contention of lack of jurisdiction in this Commission in view of the effect of terminating interstate service for passengers averaging from 31.5 to 120.1, according to the said Exhibits.

X.

Any construction of Section 13a(1) of the Act which would limit its application in the case of carriers by railroad whose tracks and trains terminate their run (in a physical sense) at a river barrier forming the boundary between two States to those which continue the carriage of their passengers across such river and across the State boundary, by ferry, and which would exclude such carriers when they so continue the carriage of their passengers by motor coach via river tunnel or bridge, would be in contravention of the Constitution of the United States, in that the same would constitute the giving of a preference to the ports of one State over those of another by a regulation of commerce, and would constitute a deprivation of property without due process of law; wherefore said section 13a(1) must be construed in a fashion as to include both

[fol. 175] the classes above identified so that it would not be in contravention of said Constitution.

Respectfully submitted,

Vincent P. Brunno,* William F. Tompkins, 605 Broad Street, Newark 2, N. J., Attorneys for New York, Susquehanna and Western Railroad Company.

Of Counsel:

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[fol. 176] Certificate of Service (omitted in printing).

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BEFORE THE INTERSTATE COMMERCE COMMISSION

RELEVANT EXTRACTS FROM THE LEGISLATIVE HISTORY
OF THE TRANSPORTATION ACT OF 1958

Mr. Smathers: . . . we would be perfectly agreeable, if the Senator from Georgia would accept the amendment, to offer an amendment which would state specifically that, with respect to any train which operates within a State whose origin and destination are within the State—that is, any train with intrastate characteristics—together with the facilities used by the train, shall be completely under the authority of the State public utilities commission, and shall not be in any way affected by the language of this particular proposal, to which the Senator from Georgia objects.

Mr. Russell: . . . What would be the effect of your proposal on the stations? Would it deny the right of the State public service commission to pass upon the closing of stations, depots, or other facilities—however the provision is spelled out in the bill—which are served by intrastate services?

Mr. Smathers: This amendment would provide that any train having its origin and destination in the same State, together with the facilities—specifically the terminals—

* Application for admission has been made.

serving that particular train, should be completely under the jurisdiction of the State regulatory body.

Mr. Russell: The language applies to the train.

Mr. Smathers: It applies also to the facilities which serve the train.

Mr. Russell: Facilities which are wholly intrastate in character?

Mr. Smathers: That is correct.

[Sen. Deb., June 11, 1958, 104 Cong. Rec. 10852]

Mr. Kuchel: Does the jurisdiction over how and when that railroad shall run its train in State A and State B rest in the discretion of the State public utilities commissions in State A and State B?

Mr. Smathers: Only with respect to discontinuance? Yes. The answer is "Yes."

Mr. Kuchel: In what respect does the Interstate Commerce Commission, under the present law, have any jurisdiction over that railroad with respect to that type of operation?

[fol. 178] Mr. Smathers: With respect to rates, and with respect to total abandonment.

Mr. Kuchel: The Senator has suggested an amendment to meet the objection of the Senator from Georgia [Mr. Russell]. How would his latest suggestion affect the example I have pointed out to him?

Mr. Smathers: If a train originated within a State and then ran across that State to the other side of the State and ended there, within that State, and never got outside that State, then with respect to discontinuance, the State public utility commission would have sole and exclusive jurisdiction.

[Sen. Deb., June 11, 1958, 104 Cong. Rec. 10852]

Mr. Kuchel: To that extent it would preempt the field, and lodge discretion in the Interstate Commerce Commission with respect to discontinuance of any train. Is that correct?

Mr. Smathers: In interstate commerce; yes.

Mr. Kuchel: If it crossed a State line.

Mr. Smathers: Because that train is operating in interstate commerce. We give authority to the Interstate Commerce Commission only over interstate commerce trains. We more clearly define that the public utilities commission has authority over completely intrastate trains and facilities.

[Sen. Deb., June 11, 1958, 104 Cong. Rec. 10853]

Mr. Revercomb: Suppose a railroad had a line running through several States, and that a branch line within a State connected with the interstate line. Suppose that on the branch line and on the main line a train was operated which began and terminated its run within the State. Do I correctly understand that such a train could be discontinued only with the approval of the State commission?

Mr. Smathers: That is correct; that is because the train originates and terminates within a State.

Mr. Revercomb: The language applies to the train, irrespective of the fact that it runs on tracks which are a part of an interstate line.

Mr. Smathers: That is our understanding.

• • • If a train originates within a State, whether it be Connecticut or Massachusetts, and ends within the State, without crossing a State line, that particular train could be discontinued only with the approval of the State regulatory agency, under the amendment.

[fol. 179] Mr. Carroll: Yes; under the amendment. But I think the Senator from New Hampshire asked the question, If the New Haven decided to abandon its Boston-Providence line, under existing law does the Interstate Commerce Commission have jurisdiction? If the amendment shall be agreed to, the Bill may confer jurisdiction on the Interstate Commerce Commission.

Mr. Smathers: No. At present the Interstate Commerce Commission has the authority to authorize abandonment, even in interstate commerce. The difference is between the abandonment of train service as a whole, including the tracks and equipment, and the discontinuance of the operation of a train. Under the present law, the Interstate Commerce Commission now has the authority to permit the total abandonment of the Boston-Providence line. But

under the present law the Commission cannot permit or authorize the discontinuance of one train, which may run every day up and down that particular track.

[Sen. Deb., June 11, 1958, 104 Cong. Rec. 10853-54]

Mr. Whitten: . . . In my own State we have very few big cities. The big cities of my region are just over the line in adjoining States; for instance, Memphis, Tenn., Mobile, Ala., and New Orleans, La. This means that practically all the railroad service in my State originates just over the line; that is, the starting point of the trains is there. It strikes me that the language of section 4 would put practically the whole transportation operation in Mississippi in the Interstate Commerce Commission and would leave out any weight that the local commission would have in determining public necessity or public convenience on existing service. Is that correct?

Mr. Harris: No; the gentleman is not correct at all. . . . If there is an intrastate operation within the gentleman's State, then the intention of this State rights provision is to leave that within the jurisdiction of the commission of that State. If there is a branch line that belongs to an interstate line; which has a starting point within the State and ends within the State, that service is left with the State corporation commission.

[H. Deb., June 27, 1958, 104 Cong. Rec. 12542]

[fol. 180] Mr. Harris: . . .

Further, we leave to the State commissions complete authority over intrastate operations. A train operating over a line of railroad located wholly within a State is within the jurisdiction of the State commission. The abandonment of stations or depots is left with State commissions. So you can see that practically all of this problem of abandonment is continued with the State commissions, as it has been in the past. The Congress has never preempted that authority.

Mr. Hemphill: . . . In the event the interstate line had a train which was wholly operated within the State itself, who would have authority to discontinue that train under this bill?

Mr. Harris: The State commission would, where the train was being operated over a line of railroad located solely within that State.

Mr. Hemphill: The State commission would retain that authority under House bill?

Mr. Harris: I made that very clear and very plain that under the language of this bill, the State commission would have that authority in the instance cited.

Mr. Hemphill: Even though the train was on an interstate line?

Mr. Harris: If it was a line operation off the interstate line, wholly within the State, then the attention of this language is that the authority there would be with the local commission. If the trains were on a line of railroad not located solely within the one State, then the railroad has the option of coming to the Interstate Commerce Commission.

[H. Deb., June 27, 1958, 404 Cong. Rec. 12530]

[fol. 181]

SUPREME COURT OF THE UNITED STATES

No. 937—October Term, 1961

NEW JERSEY, *et al.*, Appellants,

vs.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

Appeal from the United States District Court for the District of New Jersey.

ORDER NOTING PROBABLE JURISDICTION—June 25, 1962

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Frankfurter took no part in the consideration or decision of this case.